

# DRAFT ENVIRONMENTAL ASSESSMENT

FOR THE

# ANTELOPE COULEE CONSERVATION EASEMENT



**AUGUST 2019**



## Table of Contents

|   |           |
|---|-----------|
| <b>Chapter 1: Purpose of and Need for Action .....</b>                                  | <b>3</b>  |
| 1.1 Proposed Action.....  | 3         |
| 1.2 Need for the Action.....  | 5         |
| 1.3 Objectives of the Action .....  | 5         |
| 1.4 Relevant Authorities.....   | 6         |
| 1.5 Relevant Plans.....   | 6         |
| 1.6 Decision to be Made.....  | 6         |
| <b>Chapter 2: Alternatives Including the Proposed Action .....</b>                      | <b>7</b>  |
| 2.1 Alternative A: Proposed Action.....   | 7         |
| 2.2 Alternative B: No Action.....   | 8         |
| <b>Chapter 3: Affected Environment &amp; Predicted Environmental Consequences .....</b> | <b>8</b>  |
| 3.1 Land Use .....  | 8         |
| 3.2 Habitat and Vegetation.....   | 10        |
| 3.3 Terrestrial Species.....  | 11        |
| 3.4 Fisheries Species and Water Resources .....   | 12        |
| 3.5 Aesthetics and Recreation.....  | 13        |
| 3.6 Public Services, Taxes, and Community.....  | 14        |
| 3.7 Cumulative Effects.....   | 15        |
| <b>Chapter 4: Resources Considered but Eliminated from Detailed Analysis .....</b>      | <b>15</b> |
| 4.1 Air Quality .....   | 16        |
| 4.2 Noise and Utilities.....  | 16        |
| 4.3 Risk and Health Hazards .....   | 16        |
| 4.4 Cultural and Historic Resources.....  | 16        |
| <b>Chapter 5: Need for an Environmental Impact Statement.....</b>                       | <b>16</b> |
| <b>Chapter 6: Public Participation and Collaborators .....</b>                          | <b>17</b> |
| 6.1 Public Involvement.....   | 17        |
| 6.2 Comment Period.....   | 17        |
| 6.3 Approximate Timeline of Events .....  | 18        |
| <b>Chapter 7: EA Preparation.....</b>   | <b>18</b> |
| <b>Attachment A: List of Species Known to Occur on or Near the Land .....</b>           | <b>18</b> |
| <b>Attachment B: Public Scoping Comments .....</b>                                      | <b>25</b> |
| <b>Attachment C: Draft Deed of Conservation Easement .....</b>                          | <b>26</b> |
| <b>Attachment D: Draft Management Plan.....</b>   | <b>61</b> |

## **Chapter 1: Purpose of and Need for Action**

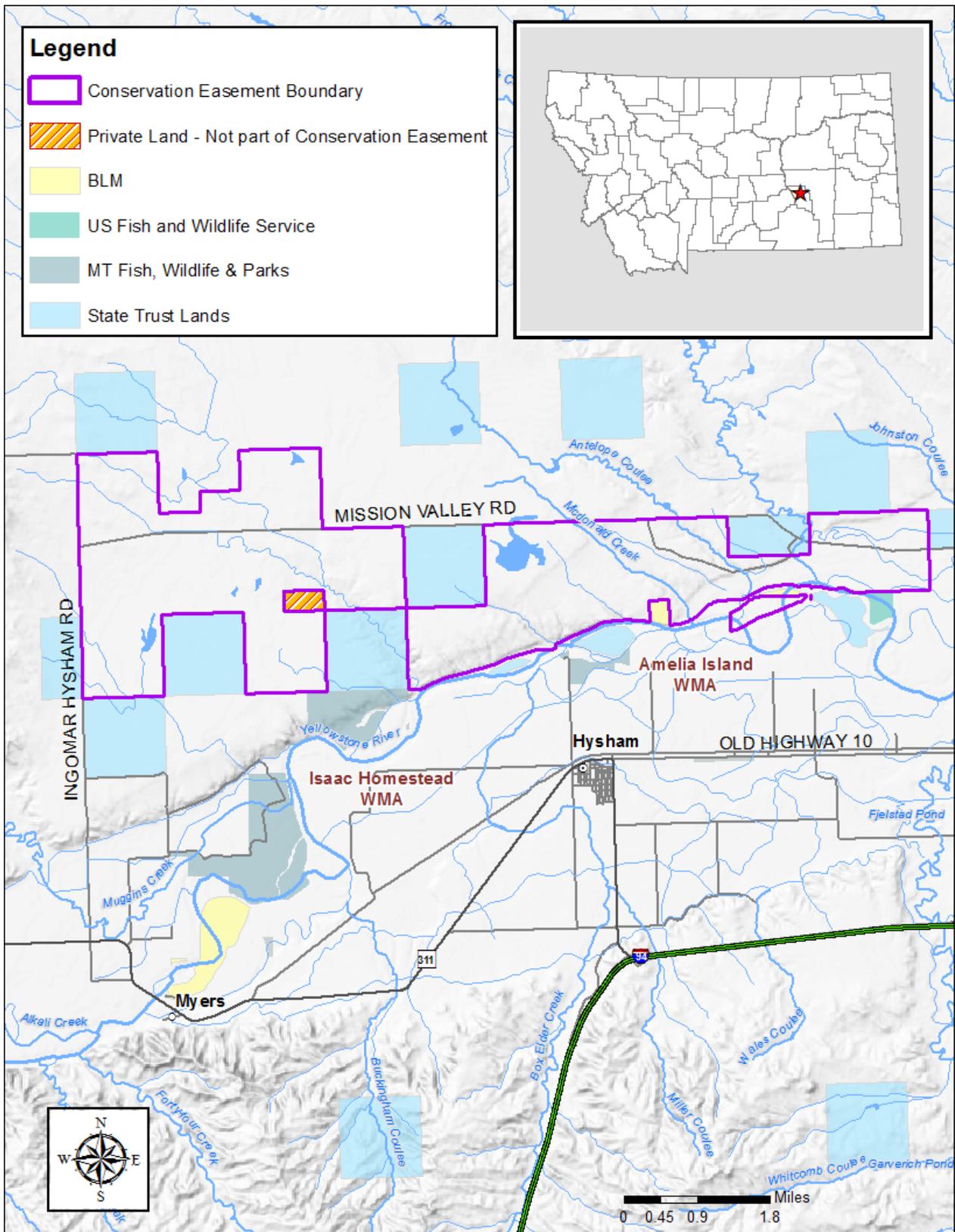
### **1.1 Proposed Action**

The Montana Department of Fish, Wildlife and Parks (hereafter, “FWP” or “the Department”) proposes to purchase a conservation easement totaling 9,706 acres in Treasure County, Montana. The proposed easement will be referred to as the “Antelope Coulee Conservation Easement” or “Easement”. The property on which the Easement is granted is referred to as the “Land” or “Ranch”.

Conservation easements are voluntary binding agreements, between a landowner, and in this case, FWP. Through the Easement, FWP pays that landowner and, in exchange, the landowner agrees to limit certain uses of the property to protect high-priority wildlife habitat and conservation values. The conservation easement is recorded with the land in perpetuity. Developing and implementing conservation easements requires an ongoing partnership between FWP and willing private landowners with the primary intent of conserving native wildlife habitats and providing public access, while keeping the land in private ownership.

The Land is located north of Hysham along the Yellowstone River and is in FWP’s Administrative Region 7, Deer/Elk Hunting District 701 (Figure 1). The Antelope Coulee Conservation Easement is adjacent to the FWP Isaac Homestead Wildlife Management Area and publicly accessible DNRC land. The Amelia Island Wildlife Management Area and Amelia Island Fishing Access Site are directly across the Yellowstone River from the proposed Easement on the south shore.

Figure 1. Lands that would be encumbered by the proposed Easement.



## **1.2 Need for the Action**

The need for grassland conservation in Montana is evident. According to FWP's Working Grassland Initiative (2017), approximately 1/3 of the grassland in eastern Montana has already been broken or significantly altered and almost 10,000 acres of grassland are converted annually in Montana. The Easement addresses this conservation need as the Land is comprised of over 90% native prairie grassland. To further support the need for action, the Land is in the Montana Sage Grouse Habitat Conservation Program's core habitat and over 80% ranks as a Tier I Community Type of Great Conservation Need as identified in Montana's 2015 Statewide Wildlife Action Plan (SWAP 2015). The Land is also adjacent to FWP's Isaac Homestead and Amelia Island Wildlife Management Areas (WMA). Establishing an Easement on the Land would build upon established wildlife habitat conservation efforts in the area.

The proposed Antelope Coulee Conservation Easement is a unique opportunity to conserve diverse habitats; ranging from cottonwood dominated riparian habitats along the Yellowstone River to sagebrush grasslands in the uplands. These habitats support a variety of species, including big game, waterfowl, upland game birds and non-game wildlife, which would benefit from the habitat protection and enhancement associated with this Easement. By following the prescribed grazing management plan, the long-term viability of native plant communities within this ecological system is expected to be maintained or improved.

To further demonstrate the need for action, public hunting access is in demand in Eastern Montana and this Easement secures public hunting opportunities for species such as antelope, mule deer, white-tailed deer, ring-necked pheasants and Canada geese. An Easement on the Land would add to the complex of public recreation opportunities in the area that include the two WMAs, Howrey Island Recreational Area (BLM) and private lands enrolled in the Block Management Program.

The Easement is needed because: 1) a continuous block of over 8,000 acres of native prairie would be protected, 2) over 1,000 acres of Yellowstone River riparian area would be protected, 3) public recreational access would be guaranteed, and 4) the Land would remain a working ranch. Collectively, the terrestrial, wetland, and aquatic habitats, recreational opportunities, and agricultural sustainability are referred to as the Land's "Conservation Values." These Conservation Values and would be protected and enhanced in perpetuity.

## **1.3 Objectives of the Action**

The objectives of the proposed Antelope Coulee Conservation Easement are to:

1. Protect Conservation Values of the Land including open space, rangeland health, habitat quality, and value for wildlife in perpetuity
2. Preserving the agricultural character of the Land in a manner that facilitates a sustainable ranching operation.
3. Provide managed public access to the Land for hunting, trapping and wildlife viewing in perpetuity.

## **1.4 Relevant Authorities**

Montana Fish, Wildlife and Parks has the authority under state law (§ 87-1-201, Montana Code Annotated (MCA)) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future.

In 1987, the Montana Legislature passed HB526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (§ 87-1-241 and 242, MCA). Subsequently, the Habitat Montana Program developed because of this legislation. The Habitat Montana Program provides direction for the proposed Easement.

Section 76-6-103 MCA authorizes the acquisition of conservation easements to protect “significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.” Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed Easement would be submitted to Treasure County for their review in accordance with this requirement.

## **1.5 Relevant Plans**

### 2015 State Wildlife Action Plan (SWAP)

<http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

The proposed Easement is in the Ingomar Focus Area as identified in SWAP 2015. The Land is 96% native habitat, comprised almost entirely of SWAP Tier I (86%) and Tier II (12%) community types and is within the range of SWAP Species of Greatest Conservation Need (SGCN), including: 3 amphibians, 23 birds, 10 mammals and 5 reptiles. The Land is also within the Montana Sage Grouse Habitat Conservation Program’s core habitat. Reference Attachment A for complete listing of wildlife species documented in similar habitats near the proposed Antelope Coulee Conservation Easement.

## **1.6 Decision to be Made**

The decision to be made is whether FWP should move forward with the proposed purchase of the Easement. Following completion of the draft Environmental Assessment (EA) and public comment period, the FWP Region 7 Supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternative, or an action that is within the scope of the analyzed alternatives. The Fish and Wildlife Commission would make

the final decision. This draft EA and the comments received are part of the decision-making process.

## **Chapter 2: Alternatives Including the Proposed Action**

### **2.1 Alternative A: Proposed Action.**

For the Proposed Action Alternative, FWP would purchase the Easement using Habitat Montana and Federal Aid in Wildlife Restoration Act (also known as Pittman-Robertson) funding for the protection of wildlife habitat. A certified, independent appraiser has estimated the value of the Easement to be \$3,439,000.00. The valuation is preliminary and is subject to standard review.

The total cost of the Easement will not exceed the appraised Easement value. Federal Aid in Wildlife Restoration Act funding could cover up to 75% of the total cost of the Easement and FWP's Habitat Montana funds would cover the remainder. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses. No State of Montana tax dollars would be used to fund this Easement.

In addition to the cost of the Easement, FWP and the Landowner would share the costs (50/50) of grazing infrastructure improvements needed to establish a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (Attachment C: Draft Deed of Conservation Easement), involving a total estimated cost of \$68,640.00 (for more detail see Attachment D: Antelope Coulee Conservation Easement Draft Management Plan, Chapter 3.6). Anticipated monitoring costs of the Easement by FWP is estimated to be between \$1,000-2,000 annually. Monitoring costs are not additional and are covered by existing FWP staff time.

Under the terms of the Easement, each party would retain or receive certain rights. Below is a summary of the terms of the Easement that would impact agricultural and Conservation Values (See Attachment C: Draft Deed of Conservation Easement for terms in their entirety):

To protect agricultural values of the Land, the Landowner would retain the right to:

- Graze livestock on the Land, provided that such grazing adheres to a grazing system that meets or exceeds the FWP Minimum Standards for Grazing Livestock
- Lease the Land for agricultural purposes.
- Install and maintain infrastructure on the Land such as water sources, roads, and fences.
- Build within identified Residential/Agricultural Building Areas.
- Sell the Land.

To protect Conservation Values of the Land, the Easement would:

- Prohibit the destruction of native vegetation, wetlands and riparian areas.
- Surface alteration would be prohibited, except in Cultivated Areas and Residential/Agricultural Building Development Areas.
- Allow for wildlife habitat restoration and enhancement projects.

- Limit the storage of waste and use of hazardous materials on the Land.
- Require prior approval for pesticide use outside of Cultivated and Residential/Agricultural Building Development Areas, except for weed management and pesticides applied directly to livestock.
- Limit commercial use of the Land to agricultural production or other temporary or seasonal activities that do not harm the Conservation Values of the Land.
- Prohibit the use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo, menagerie or other related activities.
- Prohibit the establishment of a commercial feedlot.
- Prohibit separating water rights from the Land.

Public access is subject to limitations specified by the Easement and the Management Plan (Attachments C and D). To facilitate public access for hunting, trapping, and wildlife viewing the Easement would:

- Guarantee access on a non-preferential and nondiscretionary basis in perpetuity. Members of the public may be required to obtain permission prior to accessing the Land, and the Landowner may manage the distribution and numbers of the public on the Land. The Landowner will provide 500 hunter-days annually if demand exists.
- Prohibit the landowner from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes.

## **2.2 Alternative B: No Action.**

For the No Action Alternative, FWP would not purchase the Easement. The Conservation Values of the Land would not be protected in perpetuity. The Land could be converted to cultivated crops, subdivided and management practices such as overgrazing and sagebrush removal could deteriorate the Conservation Values of the Land. Public access to the Land would not be guaranteed in perpetuity and the Landowner would not benefit from the financial compensation in exchange for adopting the conservation and public access covenants of the Easement.

# **Chapter 3: Affected Environment & Predicted Environmental Consequences**

## **3.1 Land Use**

Under the Easement, the Landowner would have the right and be encouraged to keep the Land as a working cattle ranch. The Land is comprised of 9,339 (96 %) acres of native rangeland with 444 acres (4%) of irrigated cropland . The irrigated cropland has been primarily used to produce

winter feed for livestock. There is a home site on the Land, along with various infrastructure developments including outbuildings, shops, and corrals. A more detailed analysis of land cover can be found in the Grasslands Component Description of the Management Plan (Attachment D).

Proposed Action:

The proposed Easement would protect and conserve wildlife habitat, while supporting a traditional ranching operation. The Land would be available to the public for hunting, trapping, and wildlife viewing in perpetuity. The proposed Easement would ensure that habitat and ranching resources are managed for sustainability and would prohibit the purposeful destruction of native habitats or other activities that would negatively impact the Conservation Values of the Land. Cultivation and/or seeding of identified, prior-converted areas would be allowed under the terms of the Easement.

The Proposed Action Alternative ensures that in the future the primary commercial use of the Land remains livestock grazing. The terms of the Easement require modifications of current land management practices, including the implementation of a grazing system that adheres to “FWP Minimum Standards for Grazing Livestock” (See Attachment C, Draft of Deed of Conservation Easement). To implement and accommodate the grazing plan, the landowner and FWP would cost share on range improvements such as fence construction, water development and other improvements necessary to implement the grazing system.

The Easement would not prevent mineral owners other than the Landowner, from developing minerals on the Land. Where the Landowner owns the minerals, the Easement would prohibit mining. According to the mineral remoteness report, the potential for oil and gas development on the Land is low (NRCS 2017). As with most of eastern Montana, the potential for wind energy development in the area exists. Wind power estimates rate the Land to be mostly fair with some good wind power potential. The Easement would preclude commercial wind energy development. However, the Easement does allow for renewable energy development for use on the Land, including wind energy. A single landfill to dispose of household waste and other debris generated from a typical ranching operation would be allowed on the Land. Other minimal soil-disturbing activities that can occur under normal ranching operations and maintenance to existing ranch facilities are allowed.

No Action:

If the proposed Easement were not approved, the primary land use on the Land would likely still be cattle ranching. However, the Land would be at risk of conversion to cropland (destruction of native vegetation), subdivision, and degradation of habitat due to improper grazing, wind energy development and other threats to the Conservation Values of the Land. Public access to the Land would not be required and may be limited or precluded.

## 3.2 Habitat and Vegetation

From a wildlife habitat conservation perspective, one of the most attractive features of the Antelope Coulee property is the variety of landcover types and associated ecological systems. The Land is in Montana Sage Grouse Habitat Conservation Program's core habitat and 84% of the Land ranks as Tier I Community Type of Great Conservation Need as identified in SWAP 2015. In addition, the Land is located in the Ingomar Focus Area (SWAP 2015).

Using the Montana Landcover 2016 data, the dominant (90%) habitat type on the Land is Wyoming big sagebrush and western wheatgrass dominated grasslands and mixed prairie grasslands. The shrub/grassland and associated creek bottoms provide year-round habitat for a variety of prairie wildlife species and the numerous shallow wetland ponds, with emergent vegetation, provide habitat for several breeding waterfowl species. The Yellowstone River, with its graveled islands and shoreline, provide roosting and loafing habitat while the irrigated cropland offers fall and winter food sources for migrating waterfowl.

Riparian vegetation and subsequent habitat comprise approximately 6% of the Land and are associated with the seven miles of Yellowstone River frontage, McDonald Creek, Antelope Coulee, Cedar Coulee, Froze-To-Death Creek and their ephemeral tributaries. Flooding is a key ecosystem process, creating suitable sites for seed dispersal and seedling establishment, and changing vegetation succession. Great Plains Riparian systems that occur on the Land include shrublands, mixedgrass wet meadows, herbaceous wetlands, river islands and gravel/sand flats. Plains cottonwood is well established in the riparian system and other woody species include, Boxelder, chokecherry, and sandbar willow. In floodplain areas prone to seasonal flooding, the understory may be dominated by silver sagebrush. Riparian areas can have a high herbaceous species richness but are also prone to invasion by exotic vegetation such as smooth brome and Russian olive.

### Proposed Action:

The goal of the proposed action is to conserve and enhance vegetation and wildlife habitat on the Land. The terms of the Easement are intended to protect the quantity, quality, and character of the native vegetative communities found on the Land. Research has identified that shrub species are important to wildlife for cover and forage values. The terms of the Easement would prevent the removal, control, or manipulation of sagebrush and other woody species, except in very limited and necessary circumstances. The grazing system, as described in Chapter 3 of the Management Plan (Attachment D), would maintain and enhance the vigor and productivity of vegetation through time by implementing scheduled rest and deferred grazing practices. Riparian areas and woody draws are expected to be maintained or improved as the rest treatments in the grazing system would allow shrubs and trees to rebound and reestablish. Maintaining productive vegetation will benefit both wildlife and the ranching operation. The Department will complete a Baseline Inventory Report that documents the existing condition of the Land at the time the Easement is acquired. The report will inventory wildlife habitat, plant communities, roads, fences, water developments and other features on the Land. Additional vegetation photo points and other monitoring plots will be established and maintained by FWP in appropriate areas to examine trends in habitat conditions. Both long-term and short-term changes will be evaluated to assess management effectiveness.

It is believed that the proposed action will have a positive impact on habitat and vegetation.

No Action:

Without protections offered by the terms of the proposed Easement, the quantity, quality, and character of the native plant communities found on the Land could decline. The Land would be vulnerable to sodbusting or other development or disturbance. Future impacts to native vegetation and overall productivity of the Land could reduce habitat quality and have detrimental impacts to wildlife.

### **3.3 Terrestrial Species**

The native habitat on the Land provides year-round habitat for grassland associated species such as sage grouse, antelope, mule deer, sharptailed grouse, black-tailed prairie dogs, and white-tailed jack rabbits. In addition, several grassland birds, that have been identified as species of concern including sprague's pipit, McCown's longspur, chestnut-collared longspur, baird's sparrow, brewer's sparrow, long-billed curlews and burrowing owls can occur on the Land.

The Land is within Montana's core sage grouse habitat area. Research indicates that female sage grouse complete most their nesting and brood rearing within a 4-mile radius of a lek. Considering that metric, most of the Land would be categorized as habitat important to the long-term viability of sage grouse in the area.

Prairie stream systems and associated riparian habitat along the Yellowstone River likely supports species of concern such as yellow-billed cuckoos, black-billed cuckoos and red-headed woodpeckers. The ranch has four known bald eagle nest and a great blue heron rookerie. The seven miles of river shoreline, the mosaic of irrigated agricultural fields, the mature cottonwood galleries and shrub lined draws add to the diversity of the riparian and mesic uplands and provide year-round habitat for white-tailed deer, wild turkey, ring-necked pheasants and waterfowl species.

There are approximately 40 SWAP Species of Greatest Conservation Need that could occur on the Land; most of which are species associated with sagebrush grasslands. For a more comprehensive listing of terrestrial species on the Land refer to Attachment A.

Proposed Action:

The proposed Easement would benefit a variety of wildlife. The terms of the Easement would serve to protect the agricultural values of the Land as well as to provide year-round and seasonal habitat for many of Montana's native wildlife species. Conserving native plant communities is important for many of Montana's indigenous wildlife species. Protection from subdivision, wind energy development and conversion to tillage agriculture and implementation of the grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species which is expected to have a positive impact on the diversity and/or abundance of game species as well as non-game wildlife species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of the Land, resulting in game damage problems. Such circumstances on the Land would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an “as needed” basis to the Landowner, upon agreement of both the Landowner and FWP.

The proposed action would ensure public hunting access to the Land in perpetuity. Hunting and wildlife watching on the proposed Easement would not negatively impact the overall distribution and population of game species in the area. The seasonal harvest of game species is evaluated on an annual basis by FWP. Hunting seasons and quota recommendations are submitted to the Fish and Wildlife Commission during the annual hunting season setting process.

Any new or renovated fencing would follow the guidelines for wildlife friendly fences described in Chapter 6 of the Management Plan (Attachment D) to ensure the fences do not impede wildlife movements (particularly pronghorn and sage-grouse) within and through the designated pastures.

No Action:

Without terms to conserve the Land for agriculture and open space to provide year-round habitat for many of Montana's native wildlife species, there would be no provisions preventing changes in land use that could be detrimental to wildlife such a subdivision or sodbusting. The No Action Alternative would allow the landowner to close the ranch to public hunting, which would result in a lack of public access and would reduce the FWP’s ability to manage big game numbers.

### **3.4 Fisheries Species and Water Resources**

The water resources associated with the proposed Easement include the Yellowstone River, McDonald Creek, Antelope Coulee, Froze-To-Death Creek along with unnamed ephemeral tributaries, depressional ponds and livestock reservoirs.

It is expected that currently none of the creeks (McDonald Creek, Antelope Coulee, Froze-To-Death Creek) on the Land support sport fish. However, if fish were to use those waterways, it would likely be during periods of high flow during the spring. Species that may occur in these creeks include: Black Bullhead, Fathead Minnow, Flathead Chub, Green Sunfish, Plains Minnow, and Sand Shiner.

Open water on the Land is primarily represented by stock dams and shallow ephemeral depressional wetlands. Most notably, there is a 3-acre stock dam on Antelope Coulee, a 40-acre depressional wetland pond at 7N36E section 29 and another 27-acre pond at 7N35E section 33. These areas are currently too shallow to support a sustainable fishery. Therefore, it is expected that under current conditions neither of these areas support sport fish. Emergent marshes are associated with, McDonald Creek, Antelope Coulee, Froze-To-Death Creek, and their ephemeral tributaries creating small sites throughout the land where seeps, springs, or water-holding depressions occur in association with riparian areas.

The proposed Easement is associated with seven miles of Yellowstone River frontage. Many species of native prairie fish reside in the reach of the Yellowstone River bordered by the Land including goldeye, river carpsucker, smallmouth buffalo, bigmouth buffalo, shorthead redhorse sucker, white sucker, longnose sucker, flathead chub, western silvery minnow, emerald shiner, sand shiner and blue sucker. The Yellowstone River in this area also supports species that are sought after by anglers as popular sport fish including native channel catfish and sauger, and non-native walleye and smallmouth bass. Sauger and blue Sucker are recognized as Montana Species of Special Concern.

Proposed Action:

Current agricultural uses on the Land are compatible with maintenance of water quality. However, the positive impacts of the proposed Easement could be realized in surface and ground water as a result of improvements in soil condition over time through adherence to the grazing management prescription. It is expected that the grazing system will result in more residual vegetation, which will reduce runoff and soil erosion. Additional water improvements could be developed to improve livestock distribution, range conditions, and riparian vigor.

No Action:

Without terms to conserve the Land, there would be no provisions to protect fish species and water resources. If the Land were developed, plowed or sold without protections provided by the Easement, there are no assurances that riparian areas, fish species, and water resources would be conserved.

### **3.5 Aesthetics and Recreation**

The proposed Easement is anticipated to increase public recreational opportunities. The primary public recreational opportunities include hunting, trapping, fishing and wildlife viewing. Protecting and managing the Land's open space, native prairie grassland, badlands, and riparian areas is expected to contribute to the aesthetic value of the landscape.

Proposed Action:

Implementing the proposed Easement would ensure that managed public hunting, trapping, and wildlife viewing opportunities are allowed on the Land in perpetuity. The Landowner has utilized various methods of managing access to the Land and in the past has leased the hunting rights to an outfitter and participated in the Block Management Program. Currently, the Landowner leases out the hunting rights to a group of individuals. The proposed Easement would increase the level of public recreation on the Land, as the Landowner would be required to provide a minimum 500 hunter days annually if demand exists. The proposed action is also anticipated to increase the abundance and diversity of wildlife on the Land. Therefore, increasing wildlife related recreation opportunities.

The proposed Easement is located within FWP Region 7, Deer/Elk/Antelope Hunting District 701. Hunting would be allowed on the Land in accordance with all Fish and Wildlife

Commission established regulations and seasons. The Landowner would retain the ability to manage the distribution and numbers of the hunters on the proposed Easement. The public may be required to sign in or otherwise obtain permission before entering the Land. Public access would be walk-in only via public roads or designated parking areas. The terms of the Easement would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or wildlife viewing on the Land. See the Draft Deeds of Conservation Easement (Attachment C) and Chapter 8 of the Management Plan (Attachment D) for additional details on how public access would be managed.

The terms of the Easement would protect the aesthetic values of the Land and guarantee public recreation in perpetuity by retaining current land use and prohibiting development activities that could deteriorate the Conservation Values.

No Action:

With the No Action Alternative, there would be no guarantee of public access to or across the Land and recreational opportunity would likely continue to be minimal to nonexistent.

The aesthetic values could be diminished under the No Action Alternative. There would be no terms to prevent rural subdivision, land conversion or other changes in land use that could reduce the aesthetic value of the Land.

### **3.6 Public Services, Taxes, and Community**

Proposed Action:

Under the Proposed Action Alternative, the Land will continue to support cattle ranching. Because of access requirements, neighboring landowners may observe more recreational activities on the Land by the public. To minimize issues of trespassing onto neighboring properties, boundary signs would be posted along the exterior of the Land, particularly at any problem areas identified by neighboring landowners. Hunters and wildlife watchers would be provided with maps of the Land. However, it is the responsibility of the users to know their location on the Land and avoid trespassing. Those guilty of trespassing would be subject to prosecution. No other impacts to neighboring landowners are expected.

In accordance with MCA 87-1-24e, the Easement is not expected to have significant impacts on tax revenue, employment opportunities, services required by local governments or local schools. There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems, nor increased use of energy sources. 76-6-208 states that, "Any land subject to such easement may not be classified into a class affording a lesser assessed calculation solely by reason of the creation of the easement." Therefore, as an agricultural property, the **Land would continue to be taxed as it has before**. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation.

The addition of public access to the Land could result in increased demand for goods and services from businesses that support the area, resulting in a modest increase in revenues for these businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary need for goods and services. However, the terms of the Easement would restrict future residential and commercial developments on the Land.

No Action:

The No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working ranch. However, changes in land use classifications (e.g., agricultural to recreational) could increase local property taxes for the county if such changes involved subdivision, housing or other taxable developments. Such developments may also require higher demand for utilities, improved or expanded roads, and other services that would likely be partially or wholly provided by state and local governments and service utilities.

### **3.7 Cumulative Effects**

Proceeding with the proposed action would conserve and enhance the Conservation Values of the Land by preserving grassland habitat for the benefit of numerous wildlife species. The implementation of the proposed grazing system would benefit native vegetation, maintain or enhance rangeland health, and contribute to clean water, clean air, and functioning ecosystem services, thus contributing to healthy wildlife populations in perpetuity. The no action alternative entails a possibility of habitat degradation: tillage agriculture, sagebrush eradication and overgrazing. The likelihood and extent of this degradation is difficult to quantify.

Research has identified that lack of hunting access is a barrier to recruitment and retention of hunters. The proposed Easement would provide guaranteed public access in a landscape comprised of approximately 75% private lands. Public access associated with the Easement could have a positive impact on local businesses, by bringing hunters and their dollars into the local economy. In addition, the Easement would help support a traditional ranching operation with the associated economic and community values.

Other than impacts listed in this Environmental Assessment, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing FWP conservation easements, some of which have been in place since the mid 1980's, the anticipated cumulative effects of the proposed Easement are largely positive in nature and small in magnitude.

## **Chapter 4: Resources Considered but Eliminated from Detailed Analysis**

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which

have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

#### **4.1 Air Quality**

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

#### **4.2 Noise and Utilities**

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed Easement, the Landowner would retain the right to maintain, repair, or replace utilities existing on the Land. Additionally, the proposed Easement would allow for new utilities and right of ways if they are consistent with the terms of the Easement.

#### **4.3 Risk and Health Hazards**

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

#### **4.4 Cultural and Historic Resources**

The Proposed Action and No Action Alternatives would not cause a change in land use, so FWP anticipates there would be no impacts to cultural sites or historic resources

### **Chapter 5: Need for an Environmental Impact Statement**

Based on the significance criteria evaluated in this EA, an Environmental Impact Statement (EIS) is not required. The proposed Easement would affect 9,706 acres in that it would conserve and enhance wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural—livestock operations) and to the existing Conservation Values on the Land.

This EA revealed no significant (negative or positive) impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

Limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation and habitat from the proposed grazing system, and an increase in the number of people using the Land for hunting, trapping, and wildlife viewing activities.

## Chapter 6: Public Participation and Collaborators

### 6.1 Public Involvement

Prior to the preparation of this draft EA, formal public participation specific to the proposed purchase of this Easement began with a public scoping process. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to this Easement proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, Treasure County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in three newspapers (*Independent Press*, *Billings Gazette* and *Helena Independent Record*), and on the FWP website.

Montana Fish, Wildlife, and Parks received 2 comments during the scoping process, these comments and FWP responses are listed below (Attachment B). Pursuant to this, FWP will continue the environmental review process to purchase the Easement.

A public meeting will be held to explain the proposal, answer questions and take public comment. The meeting will be held at the **Treasure County Community Center, 306 Rapelje, Hysham MT, on September 12<sup>th</sup> at 7-9 pm**. Copies of the EA will be available to the public at the FWP Region 7 Headquarters in Miles City and on the FWP website at (<http://fwp.mt.gov/news/publicNotices/>).

### 6.2 Comment Period

The public comment period will extend for thirty days beginning August 28, 2019. Written comments will be accepted until September 26, 2019 and can be submitted to:

Antelope Coulee Conservation Easement EA  
c/o Steve Atwood  
Montana Fish, Wildlife and Parks  
352 I-94 Business Loop  
Miles City, MT 59301

or

The email address: [satwood@mt.gov](mailto:satwood@mt.gov) – Subject: Antelope Coulee Conservation Easement EA

### **6.3 Approximate Timeline of Events**

(Contingent on Decision Notice and subsequent approvals)

Public Comment Period: August 28, 2019 to September 26, 2019

Public Meeting: September 12, 2019

Decision Notice Published: October 2, 2019

Proposed Easement Submitted to Fish & Wildlife Commission for Approval: October 17, 2019

## **Chapter 7: EA Preparation**

Steve Atwood, FWP Wildlife Biologist, Miles City, MT

John Ensign, FWP Wildlife Program Manager, Miles City, MT

Martin Balukas, FWP Land Agent, Helena, MT

## **Attachment A: List of Species Known to Occur on or Near the Land**



| <b>Species Group</b> | <b>Common Name</b>         | <b>Scientific Name</b>           | <b>SOC*</b> | <b>SWAP**</b> |
|----------------------|----------------------------|----------------------------------|-------------|---------------|
| Amphibians           | Boreal Chorus Frog         | <i>Pseudacris maculata</i>       |             |               |
| Amphibians           | Great Plains Toad          | <i>Anaxyrus cognatus</i>         | SOC         | SGCN2         |
| Amphibians           | Northern Leopard Frog      | <i>Lithobates pipiens</i>        | SOC         | SGCN1         |
| Amphibians           | Plains Spadefoot           | <i>Spea bombifrons</i>           | SOC         | SGCN3         |
| Amphibians           | Western Tiger Salamander   | <i>Ambystoma mavortium</i>       |             |               |
| Amphibians           | Woodhouse's Toad           | <i>Anaxyrus woodhousii</i>       |             |               |
| Birds                | American Avovet            | <i>Recurvirostra Americana</i>   |             |               |
| Birds                | American Coot              | <i>Fulica americana</i>          |             |               |
| Birds                | American Crow              | <i>Corvus brachyrhynchos</i>     |             |               |
| Birds                | American Goldfinch         | <i>Spinus tristis</i>            |             |               |
| Birds                | American Kestrel           | <i>Falco sparverius</i>          |             |               |
| Birds                | American Robin             | <i>Turdus migratorius</i>        |             |               |
| Birds                | American White Pelican     | <i>Pelecanus erythrorhynchos</i> | SOC         | SGCN3         |
| Birds                | Baird's Sparrow            | <i>Ammodramus bairdii</i>        | SOC         | SGCN3         |
| Birds                | Bald Eagle                 | <i>Haliaeetus leucocephalus</i>  | SSS         |               |
| Birds                | Bank Swallow               | <i>Riparia riparia</i>           |             |               |
| Birds                | Barn Swallow               | <i>Hirundo rustica</i>           |             |               |
| Birds                | Black-billed Cuckoo        | <i>Coccyzus erythrophthalmus</i> | SOC         | SGCN3         |
| Birds                | Black-billed Magpie        | <i>Pica hudsonia</i>             |             |               |
| Birds                | Black-capped Chickadee     | <i>Poecile atricapillus</i>      |             |               |
| Birds                | Blue-winged Teal           | <i>Anas discors</i>              |             |               |
| Birds                | Bobolink                   | <i>Dolichonyx oryzivorus</i>     | SOC         | SGCN3         |
| Birds                | Brewer's Blackbird         | <i>Euphagus cyanocephalus</i>    |             |               |
| Birds                | Brewer's Sparrow           | <i>Spizella breweri</i>          | SOC         | SGCN3         |
| Birds                | Brown-headed Cowbird       | <i>Molothrus ater</i>            |             |               |
| Birds                | Bullock's Oriole           | <i>Icterus bullockii</i>         |             |               |
| Birds                | Burrowing Owl              | <i>Athene cunicularia</i>        | SOC         | SGCN3         |
| Birds                | Canada Goose               | <i>Branta canadensis</i>         |             |               |
| Birds                | Canvasback                 | <i>Aythya valisineria</i>        |             |               |
| Birds                | Chestnut-collared Longspur | <i>Calcarius ornatus</i>         | SOC         | SGCN2         |
| Birds                | Chipping Sparrow           | <i>Spizella passerina</i>        |             |               |
| <b>Species Group</b> | <b>Common Name</b>         | <b>Scientific Name</b>           | <b>SOC*</b> | <b>SWAP**</b> |

|                      |                      |                                  |             |               |
|----------------------|----------------------|----------------------------------|-------------|---------------|
| Birds                | Clay-colored Sparrow | <i>Spizella pallida</i>          |             |               |
| Birds                | Common Grackle       | <i>Quiscalus quiscula</i>        |             |               |
| Birds                | Common Nighthawk     | <i>Chordeiles minor</i>          |             |               |
| Birds                | Common Poorwill      | <i>Phalaenoptilus nuttallii</i>  | PSOC        | SGIN          |
| Birds                | Common Raven         | <i>Corvus corax</i>              |             |               |
| Birds                | Cooper's Hawk        | <i>Accipiter cooperii</i>        |             |               |
| Birds                | Eastern Bluebird     | <i>Sialia sialis</i>             | PSOC        | SGIN          |
| Birds                | Eastern Kingbird     | <i>Tyrannus tyrannus</i>         |             |               |
| Birds                | European Starling    | <i>Sturnus vulgaris</i>          |             |               |
| Birds                | Ferruginous Hawk     | <i>Buteo regalis</i>             | SOC         | SGCN3         |
| Birds                | Field Sparrow        | <i>Spizella pusilla</i>          |             |               |
| Birds                | Gadwall              | <i>Anas strepera</i>             |             |               |
| Birds                | Golden Eagle         | <i>Aquila chrysaetos</i>         | SOC         | SGCN3         |
| Birds                | Grasshopper Sparrow  | <i>Ammodramus savannarum</i>     |             |               |
| Birds                | Gray Catbird         | <i>Dumetella carolinensis</i>    |             |               |
| Birds                | Great Horned Owl     | <i>Bubo virginianus</i>          |             |               |
| Birds                | Green-tailed Towhee  | <i>Pipilo chlorurus</i>          | SOC         | SGCN3         |
| Birds                | Great Blue Heron     | <i>Ardea herodias</i>            | SOC         | SGCN3         |
| Birds                | Great Horned Owl     | <i>Bubo virginianus</i>          |             |               |
| Birds                | Greater Sage-Grouse  | <i>Centrocercus urophasianus</i> | SOC         | SGCN2         |
| Birds                | Horned Lark          | <i>Eremophila alpestris</i>      |             |               |
| Birds                | House Sparrow        | <i>Passer domesticus</i>         |             |               |
| Birds                | Killdeer             | <i>Charadrius vociferus</i>      |             |               |
| Birds                | Lark Bunting         | <i>Calamospiza melanocorys</i>   |             |               |
| Birds                | Lark Sparrow         | <i>Chondestes grammacus</i>      |             |               |
| Birds                | Loggerhead Shrike    | <i>Lanius ludovicianus</i>       | SOC         | SGCN3         |
| Birds                | Long-billed Curlew   | <i>Numenius americanus</i>       | SOC         | SGCN3         |
| Birds                | Mallard              | <i>Anas platyrhynchos</i>        |             |               |
| Birds                | McCown's Longspur    | <i>Ryhnchophanes mccownii</i>    | SOC         | SGCN3         |
| Birds                | Merlin               | <i>Falco columbarius</i>         |             |               |
| Birds                | Mountain Bluebird    | <i>Sialia currucoides</i>        |             |               |
| Birds                | Mourning Dove        | <i>Zenaida macroura</i>          |             |               |
| Birds                | Mountain Plover      | <i>Charadrius montanus</i>       | SOC         | SGCN2         |
| <b>Species Group</b> | <b>Common Name</b>   | <b>Scientific Name</b>           | <b>SOC*</b> | <b>SWAP**</b> |

|                      |                         |                                      |             |               |
|----------------------|-------------------------|--------------------------------------|-------------|---------------|
| Birds                | Northern Flicker        | <i>Colaptes auratus</i>              |             |               |
| Birds                | Northern Goshawk        | <i>Accipiter gentilis</i>            | SOC         | SGCN3         |
| Birds                | Northern Harrier        | <i>Circus cyaneus</i>                |             |               |
| Birds                | Northern Pintail        | <i>Anas acuta</i>                    |             |               |
| Birds                | N. Rough-winged Swallow | <i>Stelgidopteryx serripennis</i>    |             |               |
| Birds                | Northern Shoveler       | <i>Anas clypeata</i>                 |             |               |
| Birds                | Orchard Oriole          | <i>Icterus spurius</i>               |             |               |
| Birds                | Red-headed Woodpecker   | <i>Melanerpes</i>                    | SOC         | SGCN3         |
| Birds                | Red-tailed Hawk         | <i>Buteo jamaicensis</i>             |             |               |
| Birds                | Red-winged Blackbird    | <i>Agelaius phoeniceus</i>           |             |               |
| Birds                | Rock Pigeon             | <i>Columba livia</i>                 |             |               |
| Birds                | Rock Wren               | <i>Salpinctes obsoletus</i>          |             |               |
| Birds                | Sage Thrasher           | <i>Oreoscoptes montanus</i>          | SOC         | SGCN3         |
| Birds                | Say's Phoebe            | <i>Sayornis saya</i>                 |             |               |
| Birds                | Sharp-tailed Grouse     | <i>Tympanuchus phasianellus</i>      | SOC         | SGCN1         |
| Birds                | Song Sparrow            | <i>Melospiza melodia</i>             |             |               |
| Birds                | Spotted Sandpiper       | <i>Actitis macularius</i>            |             |               |
| Birds                | Spotted Towhee          | <i>Pipilo maculatus</i>              |             |               |
| Birds                | Sprague's Pipit         | <i>Anthus spragueii</i>              | SOC         | SGCN3         |
| Birds                | Swainson's Hawk         | <i>Buteo swainsoni</i>               |             |               |
| Birds                | Upland Sandpiper        | <i>Bartramia longicauda</i>          |             |               |
| Birds                | Veery                   | <i>Catharus fuscescens</i>           | SOC         | SGCN3         |
| Birds                | Vesper Sparrow          | <i>Pooecetes gramineus</i>           |             |               |
| Birds                | Violet-green Swallow    | <i>Tachycineta thalassina</i>        |             |               |
| Birds                | Western Kingbird        | <i>Tyrannus verticalis</i>           |             |               |
| Birds                | Western Meadowlark      | <i>Sturnella neglecta</i>            |             |               |
| Birds                | Western Wood-Pewee      | <i>Contopus sordidulus</i>           |             |               |
| Birds                | Wild Turkey             | <i>Meleagris gallopavo</i>           |             |               |
| Birds                | Yellow Warbler          | <i>Setophaga petechia</i>            |             |               |
| Birds                | Yellow-breasted Chat    | <i>Icteria virens</i>                |             |               |
| Birds                | Yellow-billed Cuckoo    | <i>Coccyzus americanus</i>           | SOC         | SGCN3         |
| Birds                | Yellow-headed Blackbird | <i>Xanthocephalus xanthocephalus</i> |             |               |
| Mammals              | Badger                  | <i>Taxidea taxus</i>                 |             |               |
| <b>Species Group</b> | <b>Common Name</b>      | <b>Scientific Name</b>               | <b>SOC*</b> | <b>SWAP**</b> |

|                      |                            |                                |             |               |
|----------------------|----------------------------|--------------------------------|-------------|---------------|
| Mammals              | Beaver                     | <i>Castor canadensis</i>       |             |               |
| Mammals              | Big Brown Bat              | <i>Eptesicus fuscus</i>        |             |               |
| Mammals              | Black-tailed Prairie Dog   | <i>Cynomys ludovicianus</i>    | SOC         |               |
| Mammals              | Bobcat                     | <i>Lynx rufus</i>              |             |               |
| Mammals              | Bushy-tailed Woodrat       | <i>Neotoma cinera</i>          |             |               |
| Mammals              | Coyote                     | <i>Canis latrans</i>           |             |               |
| Mammals              | Deer Mouse                 | <i>Peromyscus maniculatus</i>  |             |               |
| Mammals              | Desert Cottontail          | <i>Sylvilagus audubonii</i>    |             |               |
| Mammals              | Dwarf Shrew                | <i>Sorex nanus</i>             | SOC         |               |
| Mammals              | Eastern Fox Squirrel       | <i>Sciurus niger</i>           |             |               |
| Mammals              | Eastern Red Bat            | <i>Lasiurus borealis</i>       |             |               |
| Mammals              | Fringed Myotis             | <i>Myotis thysanodoides</i>    | SOC         |               |
| Mammals              | Hayden's Shrew             | <i>Sorex haydeni</i>           | POC         |               |
| Mammals              | Hoary Bat                  | <i>Lasiurus cinereus</i>       |             |               |
| Mammals              | Least Weasel               | <i>Mustela nivalis</i>         |             |               |
| Mammals              | Little Brown Myotis        | <i>Myotis lucifugus</i>        | SOC         | SGCN3         |
| Mammals              | Long-tailed Vole           | <i>Microtus pennsylvanicus</i> |             |               |
| Mammals              | Long-tailed Weasel         | <i>Mustela frenata</i>         |             |               |
| Mammals              | Pallid Bat                 | <i>Antrozous pallidus</i>      | SOC         |               |
| Mammals              | Masked Shrew               | <i>Sorex cinereus</i>          |             |               |
| Mammals              | Meadow Jumping Mouse       | <i>Zapus hudsonius</i>         | PSOC        |               |
| Mammals              | Meadow Vole                | <i>Microtus montanus</i>       |             |               |
| Mammals              | Merriam's Shrew            | <i>Sorex merriami</i>          | SOC         |               |
| Mammals              | Mule Deer                  | <i>Odocoileus hemionus</i>     |             |               |
| Mammals              | Mountain Cottontail        | <i>Sylvilagus floridanus</i>   |             |               |
| Mammals              | Mountain Lion              | <i>Puma concolor</i>           |             |               |
| Mammals              | Muskrat                    | <i>Ondatra zibehicus</i>       |             |               |
| Mammals              | Northern Grasshopper Mouse | <i>Onychomys leucogaster</i>   |             |               |
| Mammals              | Northern Pocket Gopher     | <i>Thomomys talpoides</i>      |             |               |
| Mammals              | Northern River Otter       | <i>Lontra canadensis</i>       |             |               |
| Mammals              | Olive-backed Pocket Mouse  | <i>Perognathus fasciatus</i>   |             |               |
| Mammals              | Ord's Kangaroo Rat         | <i>Dipodomys ordii</i>         |             |               |
| Mammals              | Porcupine                  | <i>Erethizon dorsatum</i>      | PSOC        |               |
| <b>Species Group</b> | <b>Common Name</b>         | <b>Scientific Name</b>         | <b>SOC*</b> | <b>SWAP**</b> |

|          |                             |                                  |      |                |
|----------|-----------------------------|----------------------------------|------|----------------|
| Mammals  | Preble's Shrew              | <i>Sorex preblei</i>             | SOC  |                |
| Mammals  | Pronghorn                   | <i>Antilocapra americana</i>     |      |                |
| Mammals  | Raccoon                     | <i>Procyon lotor</i>             |      |                |
| Mammals  | Sagebrush Vole              | <i>Lemmiscus curtatus</i>        |      |                |
| Mammals  | Spotted Bat                 | <i>Euderma maculatum</i>         | SOC  |                |
| Mammals  | Striped Skunk               | <i>Mephitis mephitis</i>         |      |                |
| Mammals  | Swift Fox                   | <i>Vulpes velox</i>              | SOC  |                |
| Mammals  | Townsend's Big-eared Bat    | <i>Corynorhinus townsendii</i>   | SOC  |                |
| Mammals  | Western Harvest Mouse       | <i>Reithrodontomys megalotis</i> |      |                |
| Mammals  | Western Small-footed Myotis | <i>Myotis ciliolabrum</i>        |      |                |
| Mammals  | White-footed Mouse          | <i>Peromyscus leucopus</i>       | PSOC |                |
| Mammals  | White-tailed Deer           | <i>Odocoileus virginianus</i>    |      |                |
| Mammals  | White-tailed Jack Rabbit    | <i>Lepus townsendii</i>          |      |                |
| Reptiles | Common Sagebrush Lizard     | <i>Sceloporus graciosus</i>      |      |                |
| Reptiles | Common Gartersnake          | <i>Thamnophis sitalis</i>        |      |                |
| Reptiles | Greater Short-horned Lizard | <i>Phrynosoma hernandesi</i>     | SOC  | SGCN3,<br>SGIN |
| Reptiles | Gopher Snake                | <i>Pituophis catenife</i>        |      |                |
| Reptiles | North American Racer        | <i>Coluber constrictor</i>       |      |                |
| Reptiles | Painted Turtle              | <i>Chrysemys picta</i>           |      |                |
| Reptiles | Plains Gartersnake          | <i>Thamnophis radix</i>          |      |                |
| Reptiles | Prairie Rattlesnake         | <i>Crotalus viridis</i>          |      |                |
| Reptiles | Prairie Hog-nosed Snake     | <i>Heterodon nasicus</i>         | SOC  | SGCN2,<br>SGIN |
| Reptiles | Snapping Turtle             | <i>Chelydra serpentina</i>       | SOC  | SGCN3,<br>SGIN |
| Reptiles | Spiny Softshell             | <i>Apolane spinefera</i>         | SOC  | SGCN3          |
| Reptiles | Western Milksnake           | <i>Lampropeltis gentillis</i>    | SOC  | SGCN2          |

**End of Attachment A**

## **Attachment B: Public Scoping Comments**

### **Comment #1:** Helena, MT

The Montana Wildlife Federation (MWF) is the state's oldest conservation group. Since 1936, MWF has led efforts to protect Montana's fish and game, habitat, and access. Our members and affiliates look to MWF to be a strong voice on issues that enjoy broad support from hunters and anglers, such as the Habitat Montana program. Healthy habitat on both public and private lands is crucial if we are to continue to enjoy Montana's long hunting seasons, diversity of big game, upland birds and waterfowl, and superb fisheries.

The proposed Antelope Coulee Conservation Easement is approximately 90% native grassland and riparian habitat. This project is a unique opportunity to conserve riparian habitat along the Yellowstone River as well as sagebrush grasslands. The Easement would protect and enhance this important block of grassland and riparian habitat from conversion to other cover types, benefitting wildlife and agriculture, while also providing for managed public hunting and recreational opportunities.

This property is also in Montana's core sage-grouse habitat area and provides year-round habitat for antelope, mule deer, sage-grouse, sharp-tailed grouse, black-tailed prairie dogs, burrowing owls and other grassland species. The Yellowstone River portion of this ranch includes prime habitat for pheasants, turkeys and white-tailed deer. Waterfowl, great blue herons and other non-game species would also benefit from this easement. The Antelope Coulee Conservation Easement is adjacent to the FWP Isaac Homestead Wildlife Management Area and publicly accessible DNRC land. The Amelia Island Wildlife Management Area and Fishing Access Site are directly across the Yellowstone River from the proposed project area on the south shore. All in all, the addition of this easement would greatly increase hunter opportunity in Eastern Montana where public access is at a premium.

With that in mind, the Montana Wildlife Federation strongly supports the Antelope Coulee Conservation Easement in Treasure County. This easement is the embodiment of the Habitat Montana program in that it keeps traditional agriculture in place, while promoting the local hunting economy by increasing access to 9,706 deeded acres of prime wildlife habitat for mule deer, white-tailed deer, upland game birds, turkeys and waterfowl. This property is a prime example of private land conservation at its finest. It will bring hunters and landowners together, working for a common cause and it highlights the vital role private lands play in Montana's wildlife heritage. The Montana Wildlife Federation supports this easement and thanks the state, the landowner, and the hunter who have worked on conserving this landscape.

### **Comment #2:** Emigrant, MT

I support the Antelope Coulee Conservation Easement Proposal.

**End of Attachment B**

**Attachment C: Draft Deed of Conservation Easement**

After Recording, please return to:  
Department of Fish, Wildlife and Parks  
Land Unit  
P.O. Box 200701  
Helena, MT 59620-0701

## ANTELOPE COULEE DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, (“Landowner”) to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”). The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the Land
- Exhibit B** - Map Identifying the Conservation Easement Boundary
- Exhibit C** - FWP Minimum Standards for Grazing Livestock
- Exhibit D** - Maps Identifying Development Areas
- Exhibit E** - Water Rights Existing at the Time of this Easement

### I. RECITALS

The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource of value.

- A.** The Landowner is the owner of certain real property in Treasure County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B.
- B.** The Land possesses significant agricultural values and communities of native plants and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.

- C. The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- D. Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- E. The Land provides important opportunities for public recreational hunting, fishing, trapping, and wildlife viewing and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- F. The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

## **II. AGREEMENT**

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department's wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

### **A. PURPOSES**

1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement

as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.

4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon notice to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.

5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent publicly accessible lands in accordance with the following terms and conditions:
- a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including Livestock.
  - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 500 hunters on the Land per year (“hunter days”) on a first-come, first-served basis.
    1. A “hunter day” is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
    2. The Landowner, Landowner’s immediate family, Landowner’s shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating “hunter days”. The term “immediate family” is defined to include spouses, children, in-laws, and parents.
    3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
  - d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
  - e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.
  - f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across county roads and shall park in those designated areas referred to as “Parking Areas” as shown and described in the Management Plan. There shall be a minimum of 5 Parking Areas. The Parking Areas shall be spaced a minimum of 2 miles apart, and provide adequate parking to accommodate hunters during the fall hunting season. The public may not drive off these roads for any purpose, except with the express permission of the Landowner or the Landowner’s agent. The public may travel on foot from the Parking Areas or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the

purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the Parking Areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowner, the Department may open additional roads and parking areas as shown and described in the Management Plan. All roads and Parking Areas used for access by the public will be shown in the up-to-date Management Plan.

g. The Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter numbers outlined in this Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

k. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

## C. LANDOWNER'S RIGHTS

The Landowner reserves to itself, and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval** or **Prior Notice**, as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserve the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze Livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze Livestock; provided that any Livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the “FWP Minimum Standards for Grazing Livestock,” more particularly described in Exhibit C attached and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing Livestock grazing. The Management Plan provides the details of Livestock grazing on the Land, including schematic diagrams of the pasture systems to be used through the years. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to the FWP Minimum Standards for Grazing Livestock as described in Exhibit C. For the purposes of this Easement, “Livestock” is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with **Prior Approval**.
  
2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
  - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.
  
  - b. Areas not identified in the Baseline Report as cropland shall be considered “Rangeland” and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
  
  - c. **With Prior Notice**, the Landowner may change irrigation practices or methods. If a change in irrigation practices necessitate an alteration in the shape of the cultivated land area, the Landowner may change the shape of the cultivated land area with **Prior Approval from the Department**, provided the changes:
    - i. Are consistent with the purposes of this Conservation Easement, and
  
    - ii. Do not harm the Conservation Values of the Land.
  
3. **Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:
  - a. A written lease must be entered into by the Landowner and the lessee(s);
  
  - b. The lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and,

- c. A copy of the executed lease must be provided to the Department;
  - d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).
4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations.
6. **Man-made Structures.** The Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.5.).
- a. Residential Structures and Associated Outbuildings. The Landowner has the right to place, construct, remove, maintain, alter, improve, or replace two single family residences, along with associated residential outbuildings within each of the two areas identified as “Development Areas” in the attached Exhibit E. For the purposes of this Easement, the term “associated residential outbuildings” means those structures that are not used for human habitation, but which are appurtenant to the permitted to the single-family residences.
  - b. Agricultural and Non-residential Structures. The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures, including, but not limited to corrals, loafing sheds, machine sheds, and barns as long as these structures are located within the Development Areas identified in Exhibit E. The right to place agricultural/commercial structures outside of the Development Areas with **Prior Approval**.

c. Fences. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as described in the Management Plan. This does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, haystacks, or gardens.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any road, bridge, or waterway crossings constructed shall be sited and maintained so as to minimize adverse impacts on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department’s approval shall be contingent on confirmation that (a) the road’s intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner’s written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

8. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

9. **Utilities.**

a. Existing Utilities. Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. (“Utility Plan”) below.

c. New Utilities Serving Adjacent Properties. Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. below.

d. Utility Plan. Prior to preparation of the Utility Plan, the Landowner shall contact the Department to obtain the required information for inclusion in the Utility Plan. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.

#### **10. Renewable Energy Generation.**

With the **Prior Approval**, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities ("renewable energy production") solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to the provisions of Paragraph II.C.9.

The parties explicitly recognize Landowner's right to construct solar energy generation facilities within Development Area 1 subject to Paragraph II. C. 9.

#### **11. Pesticide Application and Weed Management.**

a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) in Man-Made Structures as described in Paragraph II.C.6. Except as provided in Paragraph II.C.11.b. below, **Prior Approval** is required to use pesticides on the Land in other than Residential/Agricultural Building Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. Weed Management. The right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Prairie dog colonies currently occupy approximately 100 acres on the Land. With **Prior Approval**, the Landowner may use pesticides as described in Paragraph II.C.11.a. to control prairie dogs when the minimum of 100 acres of active prairie dog colonies is

exceeded. Landowner shall not be held responsible if the acreage is reduced below the 100 acre minimum due to natural causes of mortality such as plague, predation or other environmental factors.

**12. Regulation of Public Use.**

The right to regulate public use of the Land at all times; subject, however, to the right of public hunting, trapping, and wildlife viewing access granted to the Department in Paragraph II.B.5.

**13. Oil, Gas, or Mineral Exploration and Extraction.**

a. Third Party Mineral Rights. The Landowner and Department acknowledge that, at the time this Easement is executed, third parties own or lease all, or a portion of, the oil, natural gas, or any other mineral substances under the Land “Third Party Mineral Rights”. Nothing contained in this Easement shall limit, modify or otherwise affect the Third-Party Mineral Rights, or the rights of the third parties, their agents or assigns, from selling (all or a portion), accessing or utilizing the Mineral Rights. Nothing contained in this Easement shall be deemed to be a conveyance of any Third-Party Mineral Rights or any rights to access or utilize the Third-Party Mineral Rights. Landowner and Department recognize that the owners of the Third-Party Mineral Rights have the right to enter upon the Land as allowed by law.

b. Landowner Mineral Rights. The following applies to those mineral rights retained or acquired by the Landowner that are part of the Land. Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of the Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, with **Prior Approval**, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, scoria, or shale) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

- i. The existing extraction sites will be identified in the Baseline Report.
- ii. Landowner shall use no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.
- iii. The Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity of a Third Party Mineral Rights owner. Landowner and the Department shall work together to develop a plan to discuss with the owner of the Third Party Mineral Right about how to best mitigate any potential impact on the Land and the Conservation

Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

- c. In the event this Easement is amended, the Department agrees to make a reasonable effort to notify the owners of major Third Party Mineral Rights and provide those owners the opportunity to comment on the amendment.

#### **14. Subdivision and Conveyance of Land Ownership.**

a. For the purposes of this Easement, the Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.

b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.

c. The Landowner shall provide Prior Notice to the Department of any proposed real property transfer, and such transfer must be affected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Department may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

#### **15. Industrial and Commercial Uses.** The right to:

a. Conduct agricultural production and related activities as provide for in the Management Plan.

b. With **Prior Approval**, conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

c. With **Prior Approval**, and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture or forestry including but not limited to agri-tourism, processing, packaging, and marketing of farm or forest products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture or forestry.

## D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes or terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, with **Prior Approval** Landowner may harvest or contract the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2.
2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
3. **Wetland and Riparian Areas.**
  - a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table. Wild Hay Fields, Crop Fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.
  - b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.4.
  - c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.
4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are

held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowners transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, abandon, or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown on Exhibit \_\_\_\_, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.11. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.7. is prohibited.
8. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as provided for in Paragraph II.C.2. and for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, trapping, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.13. Any other mineral exploration, development, or extraction is prohibited.

- 11. Man-made Structures.** The construction or placement of any structures on the Land is prohibited, other than as expressly allowed in Section II. C.
- 12. Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Section II. C.
- 13. Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
- 14. Shooting Preserve, Wildlife Propagation and Related Activities.**  
The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner have the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplantedation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantedation or release on the Land. Domestic livestock is allowed per II.C.1
- 15. Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, outfitting, restaurant, campground, trailer park, motel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C. of this Easement is prohibited.
- 16. Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production

on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.5., are not considered waste disposal.

**17. Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

#### **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Management Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner (“Successor in Interest”), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

#### **F. EASEMENT BASELINE REPORT**

The parties agree that an Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and determined to be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at

Landowner's request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner's compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or changed habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the changed conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

#### **G. PRIOR NOTICE AND PRIOR APPROVAL**

Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department may provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

If the Department fails to respond to Landowner's request for Prior Approval within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed

by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner: \_\_\_\_\_

With a copy to: \_\_\_\_\_

To Department:  
Department of Fish, Wildlife & Parks  
Attention: Administrator, Wildlife Division  
1420 E. Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701

With a copy to:  
Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
\_\_\_\_\_

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

## **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. fail to cure the violation within 30 days after receipt of notice from the Department, or
2. under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the

Department in writing on a date by which efforts to cure such violation will reasonably begin), or

3. fail to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner' violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders

otherwise or unless the parties mutually agree to share such costs. In the event of such litigation to enforce the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

#### **I. HOLD HARMLESS AND INDEMNITY**

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

#### **J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this

Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is \_\_\_ percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party \_\_\_ percent of the unencumbered value of the real property and the Department shall be entitled to receive \_\_\_ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

#### **K. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_ [Bank], whose address is \_\_\_\_\_ (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **L. ASSIGNMENT**

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal

Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the Conservation Values and Purposes of this Easement are to be carried out in perpetuity.

#### **M. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the Purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of the affected county.

#### **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of the affected county and may re-record it at any time as may be required to preserve its rights in this Easement.

#### **O. REPRESENTATIONS AND WARRANTIES**

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been

removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **P. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid. Section headings are for convenience only and will not be given effect in interpretation of this Easement.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.
12. Section Headings. Section headings and typeface are for convenience only and will not be given effect in interpretation of this Easement

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

**GRANTED BY: LANDOWNER**

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**ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**

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Martha Williams, Director

STATE OF MONTANA )  
 : ss  
COUNTY OF LEWIS AND CLARK )

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by Martha Williams, as Director of the Montana Department of Fish, Wildlife and Parks.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**ACKNOWLEDGEMENTS**

STATE OF MONTANA )  
 : ss.  
COUNTY OF TREASURE )

This instrument was acknowledged before me on \_\_\_\_\_, 2018,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

## EXHIBIT "A"

### Antelope Coulee Legal Description

#### Legal Description

##### **T7N R35E**

Section 21: ALL

Section 22: SE1/4, S1/2SW1/4

Section 23: ALL

Section 25: ALL

Section 26: W1/2, NE1/4, N1/2SE1/4

Section 27: ALL

Section 28: ALL

Section 33: ALL

Section 35: ALL

##### **T7N R36E**

Section 25: Lots 1,2,3, N1/2, N1/2 S1/2, SE1/4SE1/4

Section 26: Lots 1,2,3,4, N1/2S1/2

Section 27: ALL

Section 28: ALL

Section 29: ALL

Section 31: Lots 1,2,3,4,5,6 and 7, NE1/4, E1/2NW1/4, NE1/4SW1/4, NW1/4SE1/4

Section 32: Lots 1,2,3 and 4, SW1/4NE1/4, S1/2NW1/4, N1/2N1/2

Section 33: Lots 1,2,3 and 4, NW1/4NW1/4

Section 34: Lots 1,2,3

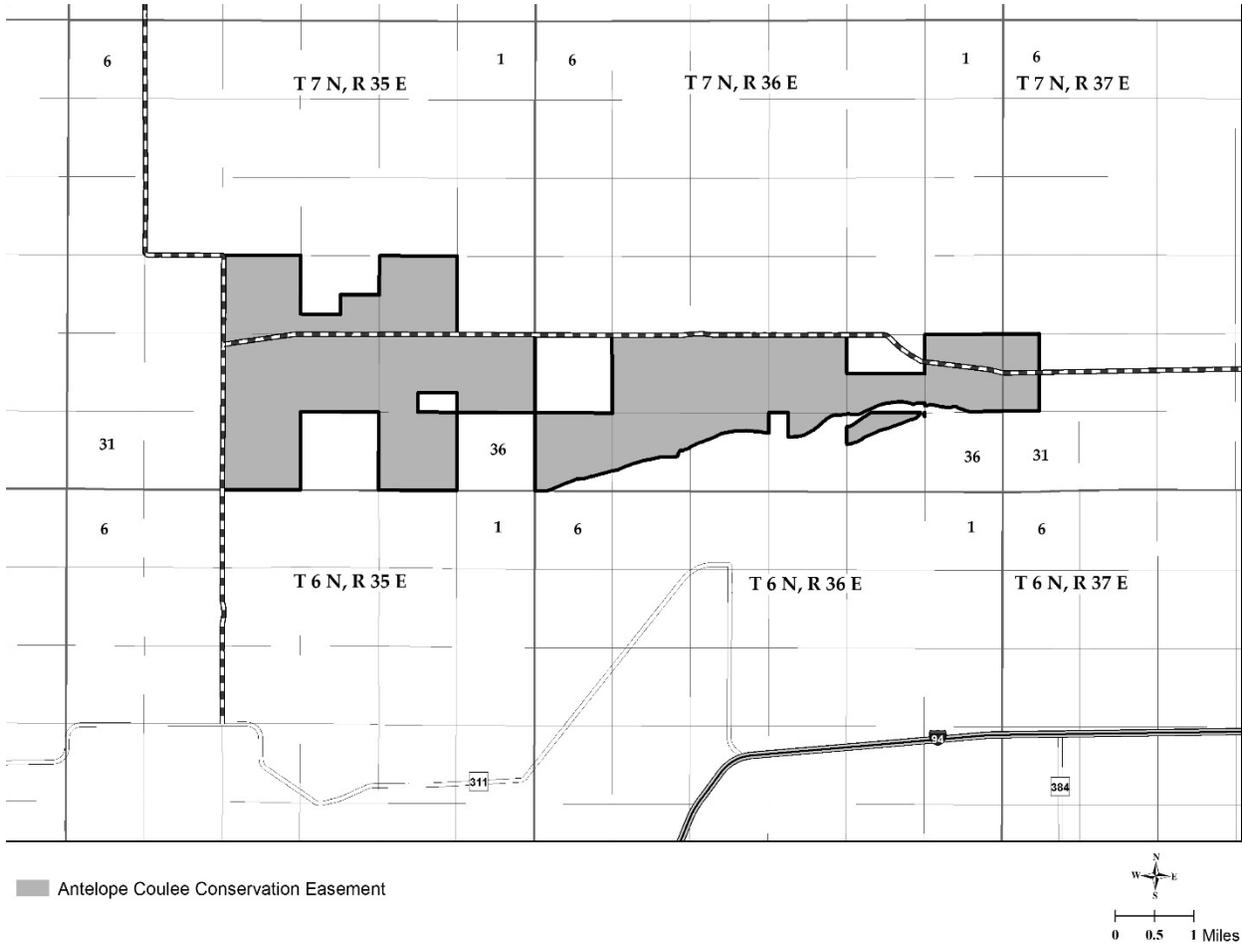
Section 35: Lots 1,2,3,4,5,6

##### **T7N R37E**

Section 30: Lots 1,2,3 and 4, E1/2W1/2

-- END OF LEGAL DESCRIPTION --

# EXHIBIT "B"



**End of EXHIBIT "B"**

# EXHIBIT “C”

## FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

### Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP-managed Wildlife Management Areas (WMAs), wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also on WMAs, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

### Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems.

Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

### **Grazing Plan**

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the Management Plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

### **Upland Minimum Grazing Standard for Summer/Fall Systems**

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1.

Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally

it may be necessary for the grazing system to

allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

**Table 1. Livestock Grazing Formula using a three pasture approach as an example.**

| <b>Grazing Seasons</b>  | <b>Pasture 1</b> | <b>Pasture 2</b> | <b>Pasture 3</b> |
|---|------------------|------------------|------------------|
| <b>Year One</b>   | A                | B                | C                |
| <b>Year Two</b>   | B                | C                | A                |
| <b>Year Three</b>   | C                | A                | B                |
| When all treatments have been applied to all pastures, the grazing rotation begins again at year one.   |                  |                  |                  |
| A = livestock grazing allowed during the growing season; B = livestock grazing begins after seed-ripe time; C = rest from livestock grazing yearlong. |                  |                  |                  |

### **Winter and/or Early Spring Grazing**

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season.

Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach

is frequently used. The area designated for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree- dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

### **Scope**

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

### **Non-native Pasture**

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture, a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline *Series entitled: The Need for Stream*

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

### **Stocking Rate**

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

### **Mineral and Other Supplements**

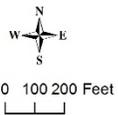
On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

### **Flexibility**

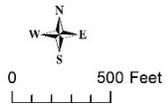
Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

# EXHIBIT "D"



**East Development Area**  
Treasure County - Twn. 7N, Rng. 36E, Section 26

East Development Area   
approximately 10 acres



**West Development Area**  
Treasure County - Twn. 7N, Rng. 36E, Section 34

West Development Area   
approximately 29 acres

**End of EXHIBIT “D”**

**EXHIBIT E**

**Water Rights Existing at the Time of This Easement**

**Water Right No's**

**42KJ 186769 00**

**42KJ 186772 00**

**42KJ 186773 00**

**42KJ 33575 00**

**END OF EXHIBIT E**

**End of Attachment C**

## **Attachment D: Draft Management Plan**

# ANTELOPE COULEE CONSERVATION EASEMENT DRAFT MANAGEMENT PLAN



**AUGUST 2019**



## Table of Contents

|  |           |
|--|-----------|
| <b><u>CHAPTER 1: Introduction</u></b> .....                                | <b>65</b> |
| <b><u>CHAPTER 2: Description of the Land</u></b> .....                     | <b>66</b> |
| <u>2.1 Overview</u> .....  | 66        |
| <u>2.2 Big Sagebrush Steppe</u> .....                                      | 70        |
| <u>2.3 Great Plains Mixedgrass Prairie</u> .....                           | 70        |
| <u>2.4 Great Plains Badlands</u> .....                                     | 71        |
| <u>2.5 Great Plains Wooded Draw and Ravine</u> .....                       | 72        |
| <u>2.6 Open Water and Emergent Marsh</u> .....                             | 72        |
| <u>2.7 Great Plains Sand Prairie</u> .....                                 | 72        |
| <b><u>CHAPTER 3: Grazing Management</u></b> .....                          | <b>79</b> |
| <u>3.1 Grazing Overview</u> .....  | 79        |
| <u>3.2 Summer and Fall Grazing</u> .....                                   | 81        |
| <u>3.3 Winter Grazing</u> .....  | 81        |
| <u>3.4 Spring Grazing</u> .....  | 82        |
| <u>3.5 Replacement Heifers and Bulls</u> .....                             | 82        |
| <u>3.6 Stocking Rate and Supplements</u> .....                             | 87        |
| <u>3.7 Range Improvements</u> .....  | 87        |
| <u>3.8 Wildlife Habitat Goals Associated with Grazing Management</u> ..... | 88        |
| <b><u>CHAPTER 4: Management of Cultivated Areas</u></b> .....              | <b>89</b> |
| <b><u>CHAPTER 5: Management of Noxious Weeds</u></b> .....                 | <b>90</b> |
| <b><u>CHAPTER 6: Wildlife Friendly Fences</u></b> .....                    | <b>90</b> |
| <b><u>CHAPTER 7: Non-Cattle Domestic Livestock</u></b> .....               | <b>91</b> |
| <b><u>CHAPTER 8: Public Access</u></b> .....                               | <b>91</b> |
| <b><u>CHAPTER 9: Nuisance Wildlife and Trapping</u></b> .....              | <b>95</b> |
| <b><u>CHAPTER 10: Wastes Disposal</u></b> .....                            | <b>95</b> |
| <b><u>CHAPTER 11: Monitoring</u></b> .....                                 | <b>96</b> |

**List of Figures**

Figure 1: The lands encumbered by the Easement...... 67

Figure 2. Boundary of the Easement and associated public land leases. ..... 68

Figure 3: Landcover for Ecological Systems within the Easement. ..... 73

Figure 4. Ecological Sites and soil types within the Easement. ..... 74

Figure 5. Schematic of the grazing pastures on the Land. ..... 80

Figure 6. Year One summer and fall grazing schedule...... 83

Figure 7. Year Two summer and fall grazing schedule. ..... 84

Figure 8. Year Three summer and fall grazing schedule. ..... 85

Figure 9. Location of the Cultivated Areas...... 89

Figure 10. Designated Parking Areas for walk-in public access...... 94

**List of Tables**

Table 1: Landcover of ecological systems within the Easement. Colors correspond with Figure 3...... 69

Table 2. Soil types, corresponding major plant community types and Ecological Sites. ..... 75

Table 3. Summer and fall grazing schedules. ..... 86

Table 4. Range improvements cost estimates. Based on FWP Habitat Bureau’s 2018-2019 Cost-list. .... 87

## CHAPTER 1: Introduction

A Conservation Easement (“Easement”) has been granted by DeCock Ranch Company, P.O. Box 171, Hysham, MT 59038 (“Landowner”) to Montana Department of Fish, Wildlife and Parks whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“FWP”). The Easement encumbers all or a portion of the deeded property depicted in Figure 1.1 as follows: The Antelope Coulee Deed of Conservation Easement granted by the Landowner to FWP on DATE, YEAR and recorded in Book XX, Page XX of the records of Treasure County, Montana. This Management Plan incorporates the provisions of the Easement into one document that is relevant to the entire Antelope Coulee Conservation Easement (hereafter referred to as the “Land”). This Management Plan, dated as of DATE, YEAR, is entered into as an agreement between the Landowner and FWP.

Whereas conservation Easement (CE) are intended to endure in perpetuity, the purpose of a management plan is to document strategies that are consistent with the terms and intent of the Easement while meeting the current needs of the Landowner and FWP. By design, management plans are intended to be periodically reviewed and updated, upon mutual agreement by the Landowner and FWP, to accommodate changing conditions on the land, fluctuating wildlife populations, advancing technologies, improved scientific knowledge, changing agricultural practices, and other as-yet unknown future situations. As required by the Easement, this and future management plans will be consistent with “FWP Minimum Grazing Standards for Grazing Livestock vers. 1.1”

## CHAPTER 2: Description of the Land

### 2.1 Overview

The Land is located north of Hysham, Montana along the Yellowstone River. In addition to the 9,706 acres of deeded lands under conservation easement, the Landowner holds leases on 46 acres of BLM and 1,591 acres of DNRC lands, for a total management footprint of 11,343 acres (Figure 2.1 and 2.2).

From a wildlife habitat conservation perspective one of the most active features of the Antelope Coulee property is the variety of landcover types and associated ecological systems that are present (Table 2.1, Figure 2.2). The Land is comprised of native ecological systems, primarily Big Sagebrush Steppe ecological system intersperse with a mosaic of Great Plains Mixedgrass Prairie ecological system. The Land is within Montana's core sage-grouse habitat Sagebrush grasslands provide important year-round habitat not only for sage-grouse but for other sagebrush grassland associated species such as antelope, mule deer, sharptailed grouse, black-tailed prairie dogs, white-tailed jack rabbits and grassland bird that have been identified as species of concern including sprague's pipit, McCown's longspur, chestnut-collared longspur, baird's sparrow, brewer's sparrow, long-billed curlews and burrowing owls.

Prairie stream systems and associated riparian habitat exist along the Yellowstone River, McDonald Creek, Antelope Coulee, Froze-To-Death Creek as well as other ephemeral minor tributaries. The riparian habitat likely supports species of concern such as yellow-billed cuckoos, black-billed cuckoos and red-headed woodpeckers. The Land has four known bald eagle nest and great blue heron rookeries. The seven miles of river shoreline with its mosaic of irrigated agricultural fields, mature cottonwood galleries and draw lined juniper, buffaloberry and skunkbrush sumac add to the diversity of the mesic uplands. In addition to the species listed above, these areas provide year-round habitat for white-tailed deer, wild turkey, ring-necked and waterfowl species.

The 96% of the ecological systems on the Land are healthy and functional native systems. The long-term viability of native plant communities within this ecological system is expected to be maintained or improved under this management plan. Soil types and Ecological Site Descriptions for the Antelope Coulee can be found in Table 2.1 and Figure 2.3.

Figure 2: The lands encumbered by the Easement.

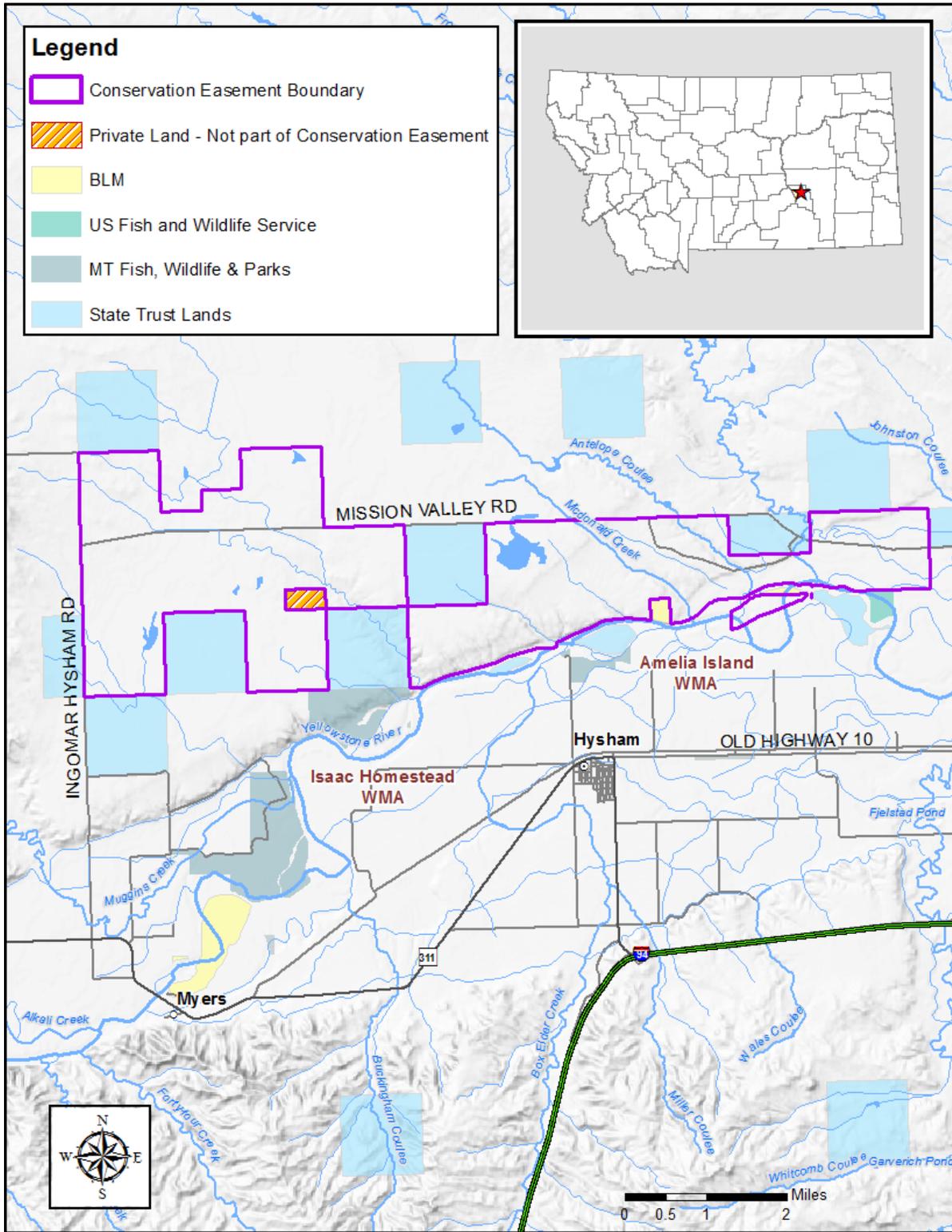


Figure 3. Boundary of the Easement and associated public land leases.

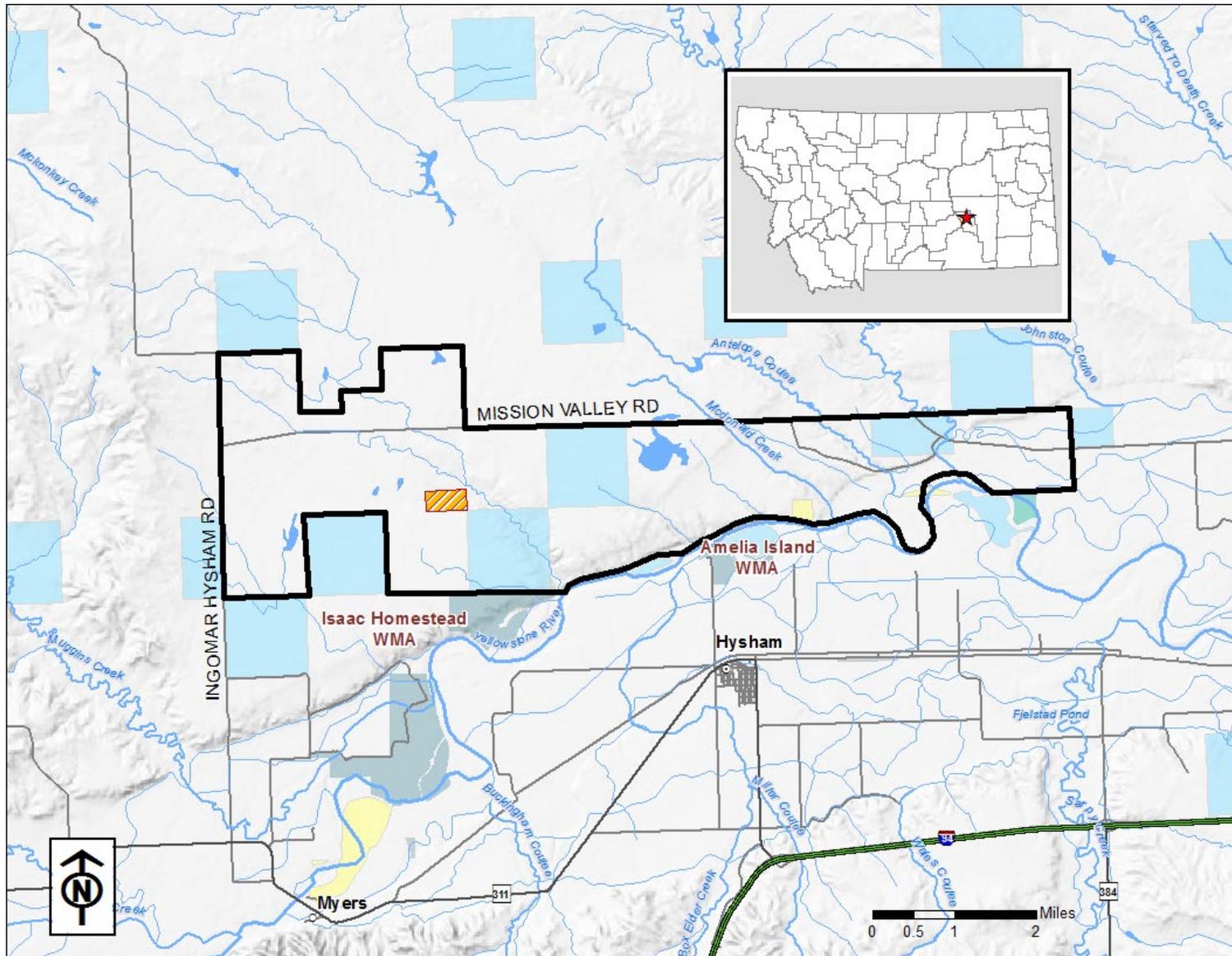
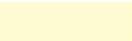
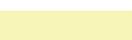
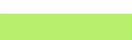


Table 1: Landcover of ecological systems within the Easement. Colors correspond with Figure 3.

| <b>Ecological System</b>   | <b>CE Acres</b> | <b>% of Total CE Acres</b> |
|--|-----------------|----------------------------|
|  Big Sagebrush Steppe                             | 5633.68         | 58.04%                     |
|  Great Plains Mixedgrass Prairie                  | 1449.14         | 14.93%                     |
|  Great Plains Badlands                            | 1325.76         | 13.66%                     |
|  Great Plains Riparian                            | 400.05          | 4.12%                      |
|  Cultivated Crops                                 | 349.62          | 3.60%                      |
|  Great Plains Floodplain                          | 140.34          | 1.45%                      |
|  Great Plains Ponderosa Pine Woodland and Savanna | 134.09          | 1.38%                      |
|  Open Water                                       | 121.82          | 1.26%                      |
|  Great Plains Sand Prairie                        | 90.36           | 0.93%                      |
|  Greasewood Flat                                  | 27.67           | 0.29%                      |
|  Mat Saltbrush Shrubland                         | 17.63           | 0.18%                      |
|  Great Plains Wooded Draw and Ravine            | 15.17           | 0.16%                      |
|  Emergent Marsh                                 | 0.67            | 0.01%                      |

## 2.2 Big Sagebrush Steppe

The Big Sagebrush Steppe is the most common ecological system<sup>1</sup> on the Land and comprising of over 58% of the Land (Table 1, Figure 3). The soils are typically deep and non-saline, often with a microphytic crust. These areas are dominated by Wyoming big sagebrush and western wheatgrass, with shrub canopy cover ranging from 10-25% and herbaceous cover typically greater than 25%. Big Sagebrush Steppe, in conjunction with sagebrush on adjacent mixedgrass prairie sites, provides important year-round habitat for a variety of sagebrush-associated wildlife species. Other shrub species present may include silver sagebrush, greasewood, saltbush, and rabbitbrush. Other grass and sedge species include Indian ricegrass, blue grama, Sandberg's bluegrass, bluebunch wheatgrass, threadleaf sedge and needleleaf sedge. Japanese brome and cheatgrass, indicators of disturbance in this system, typically occur at low density on the Land. Common forbs include Hood's phlox, prickly pear, scarlet globemallow, purple prairie clover, gayfeather, and milkvetch.

## 2.3 Great Plains Mixedgrass Prairie

The Great Plains Mixedgrass Prairie ecological system comprises of approximately 15% of the Land and occurs as patches interspersed other ecological systems and occurs on uplands, slopes, and creek bottoms (Table 1, Figure 3). This system occurs on a variety of soils (primarily fine to medium-textured soils) and ecological sites. Wyoming big sagebrush - western wheatgrass associations are common within the Great Plains Mixedgrass Prairie ecological system. These sagebrush grasslands commonly contain moderate density (10-25% canopy cover) sagebrush, especially where they occur near or adjacent to Big Sagebrush Steppe systems. The result is extensive sagebrush grasslands that are valuable to a variety of wildlife species.

Common grass species in the Great Plains Mixedgrass Prairie ecological system include western wheatgrass, thickspike wheatgrass, green needlegrass, blue grama, and needle and thread. Within these systems, western wheatgrass tends to be the dominant grass species, especially on finer-textured soils, with dominance decreasing under prolonged periods of heavy grazing. Sites with a strong component of green needlegrass indicate a more favorable moisture regime and moderate grazing pressure, whereas needle and thread increase with coarser soil textures, or under heavy grazing pressure. Cool season exotics such as Kentucky bluegrass, smooth brome, Japanese brome, cheatgrass and crested wheatgrass are common in eastern Montana mixedgrass prairies and tend to increase in dominance with heavy grazing. These non-native cool-season grasses are ubiquitous throughout eastern Montana grassland systems. In many places, these species have been promoted by overgrazing and/or intentionally introduced by ranchers hoping to improve forage production. The Antelope Coulee is no exception. Forb diversity tends to be high within these systems, with common species including yarrow, scarlet globemallow, western sagewort, boreal sagewort, silver lupine, fuzzy beardtongue, shining penstemon and Missouri goldenrod. Common shrub species include western snowberry, creeping juniper, silver sage and Wyoming big sagebrush.

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<sup>1</sup> Information about each ecological system is derived from the Montana Natural Heritage Program Field Guide to Ecological Systems, available online at [http://fieldguide.mt.gov/displayES\\_LCLU.aspx](http://fieldguide.mt.gov/displayES_LCLU.aspx), as well as field observation and unpublished data.

The dominant land uses within Great Plains Mixedgrass Prairie are grazing and dryland farming (Luna and Vance 2017<sup>2</sup>). Approximately 96% of the ecological system on the Land remains uncultivated leaving a total of 349.6 acres with a history of tillage that will be managed as Cultivated Areas. For maps and information on management of Cultivated Areas see section II.C.2 of the Easement, maps found in Exhibit D of the Easement and Chapter 4 of this Management Plan.

## 2.4 Great Plains Badlands

The Great Plains Badlands ecological system comprises of approximately 14% of the Land and is interspersed within the Big Sagebrush Steppe and Great Plains Mixedgrass Prairie ecological systems. Great Plains Badlands are characterized by rugged, eroded land formations and sparse vegetative cover. Soils are typically consolidated clayey soils with bands of sandstone or isolated consolidates. Characterized by clay soils, steep slopes, and limited vegetation, badlands tend to be erosive and received precipitation contributes little to soil moisture. Vegetation communities associated with this ecological system are adapted to soils that are dry throughout the growing season. Common plant associations include greasewood, saltbush, littleleaf eriogonum or threadleaf snakeweed. Grass cover tends to be sparse, with species such as western wheatgrass, bluebunch wheatgrass, and Indian ricegrass. Common forbs include few-flowered buckwheat, threadleaf snakeweed, curlycup gumweed, longleaf wormwood, and Nuttall's povertyweed. Other shrubs that may be present include Wyoming big sagebrush, silver sagebrush, yellow rabbitbrush and rubber rabbitbrush, saltbush, and Rocky Mountain Juniper.

*Great Plains Riparian and Floodplain.* Great Plains Riparian Systems and Floodplain comprise approximately 6% of the Land are associated with the seven miles of Yellowstone River frontage, McDonald Creek, Antelope Coulee, Froze-To-Death Creek, and their tributaries. Flooding is the key ecosystem process, creating suitable sites for seed dispersal and seedling establishment, and changing vegetation succession. Great Plains Riparian systems that occur on the Land include shrublands, mixedgrass wet meadows, herbaceous wetlands, river islands and gravel/sand flats. Plains cottonwood is well established in the riparian system and other common woody species include, Boxelder, wild plum, western snowberry, Silver buffaloberry, chokecherry, Sandbar willow and woods rose. In areas where the channel is incised, the understory may be dominated by Wyoming big sagebrush or more commonly silver sagebrush. Riparian areas can have a high herbaceous species richness but are also prone to invasion by exotic vegetation such as smooth brome and Russian olive. Primary threats to floodplain systems include overgrazing and conversion to agriculture. The health of these systems may be heavily influenced by the condition of the surrounding landscape, because the quality and quantity of ground and surface water inputs into riparian areas depends on the quantity and health of vegetation in the uplands. The grazing system prescribed in Chapter 3 of this Management Plan will address these threats, providing periods of rest from grazing to benefit riparian systems, and providing residual cover on a landscape scale which will slow erosion, improve moisture retention, and reduce sediment loads in overland flow.

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<sup>2</sup>Luna, T. and L. K. Vance. 2010. Great Plains Mixedgrass Prairie. Montana Field Guide. Montana Natural Heritage Program. [http://FieldGuide.mt.gov/displayES\\_Detail.aspx?ES=7114](http://FieldGuide.mt.gov/displayES_Detail.aspx?ES=7114).

## **2.5 Great Plains Wooded Draw and Ravine**

This ecological system occurs on over 1% of the Land. These narrow, linear bands of woody vegetation provide critical wildlife cover, browse and mast production. Snow entrapment and seasonal, short-duration flooding provide critical moisture that promotes woody species and contributes to deep loamy soils. Common understory species include Rocky Mountain Juniper, chokecherry, wild plum, skunk brush and western snowberry. The herbaceous layer is often dominated by sedges (*Carex* species) and grasses such as northern reedgrass, western wheatgrass, bluebunch wheatgrass, and thickspike wheatgrass. Common forbs include American licorice, yarrow, meadow rue, and bedstraw. Exotics such as yellow sweetclover and Kentucky bluegrass occur in these systems. Shade and moisture draw livestock into woody draws and ravines, concentrating use, and causing mechanical damage to woody species. Browsing and trampling by livestock can limit the growth and recruitment of woody species. The grazing system described in Chapter 3 of this Management Plan will provide periods of growing-season rest, allow woody species to recruit out of the browse zone, and is designed to improve the long-term viability of woody draws on the Land.

## **2.6 Open Water and Emergent Marsh**

Open water on the Land is primarily represented by the Yellowstone River, stock dams and by many scattered prairie pot-hole emergent marshes (Figure 2.2). Emergent marshes are creating small sites throughout the Land where seeps, springs, or water-holding depressions occur. These areas are highly production for wildlife especially waterfowl (especially dabblers), wading birds and shore birds. The emergent vegetation, primarily common spikesedge provides high quality foraging. Northern pintail, mallard, and American wigeon Northern shoveler, blue-winged teal, and Canada geese are common on the wetland during the breeding season and benefit from the high-quality foraging habitat. Upland species such as sharptailed-grouse and sage-grouse also benefit from these wetland area as they provide important food resources and brood rearing habitat in the drier landscape of the Northern Great Plains

## **2.7 Great Plains Sand Prairie**

Great Plains Sand Prairie comprises approximately 1% of the Land and occurs on coarse-textured soils that have weathered in place from sandstone caprock or marine shale formations. Soils in sand prairies are highly permeable and susceptible to wind erosion (blowouts) and vegetation loss. On the Land, sand prairies are intermixed with Great Plains Mixedgrass Prairie. Needle and thread is often the dominant grass species. Other common species include little bluestem, threadleaf sedge, bluebunch wheatgrass, and purple threeawn. Forb species include scurf pea, Indian breadroot, and Narrowleaf purple coneflower. Common shrubs include silver sage, Wyoming big sagebrush, horizontal juniper, skunkbush sumac and soapweed yucca. The grazing system described in Chapter 3 of this Management Plan incorporates periods of rest which will allow plants to recover from grazing and minimize the occurrence of blowouts and vegetation loss within Great Plains Sand Prairie systems.

Figure 4: Landcover for Ecological Systems within the Easement.

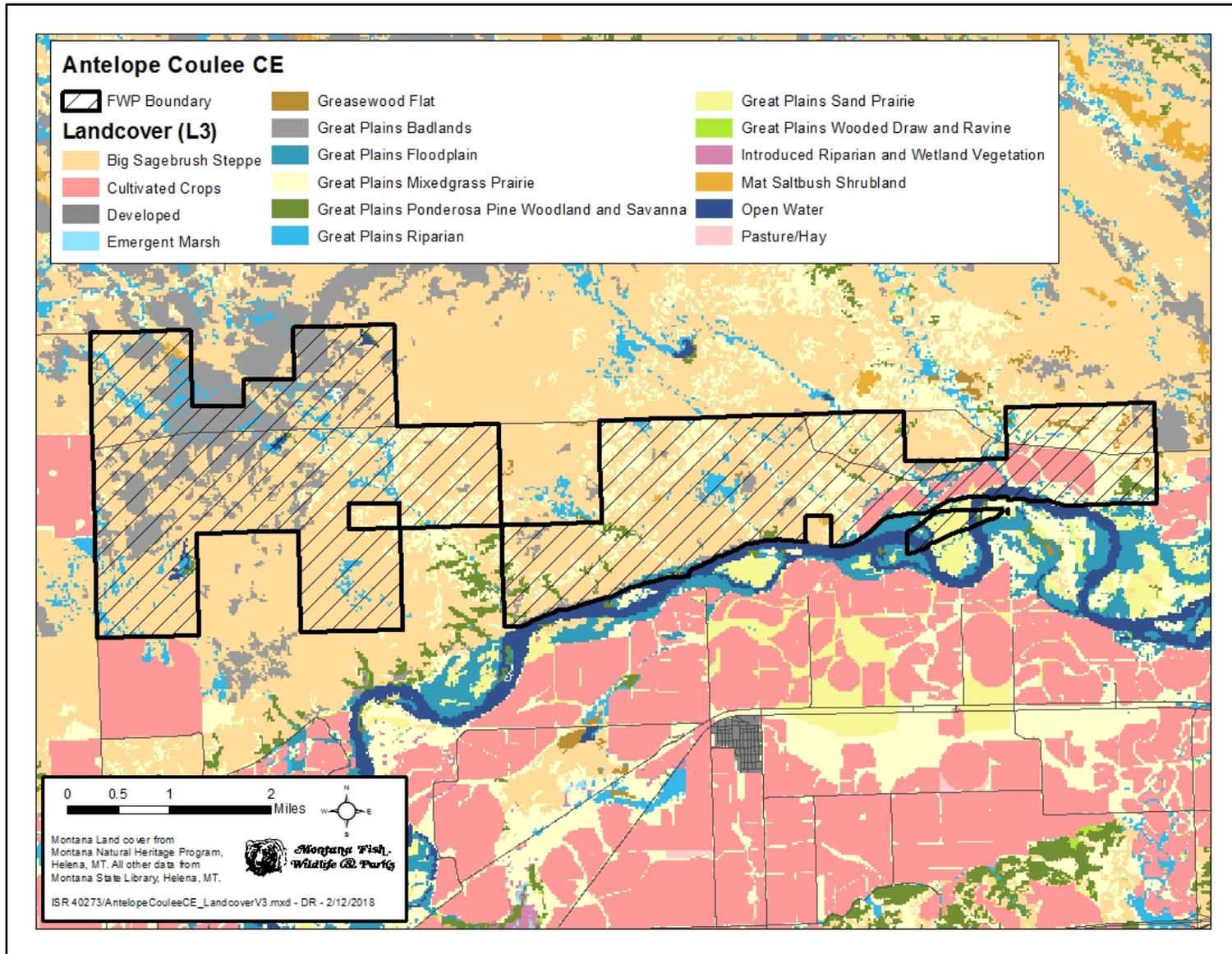


Figure 5. Ecological Sites and soil types within the Easement.

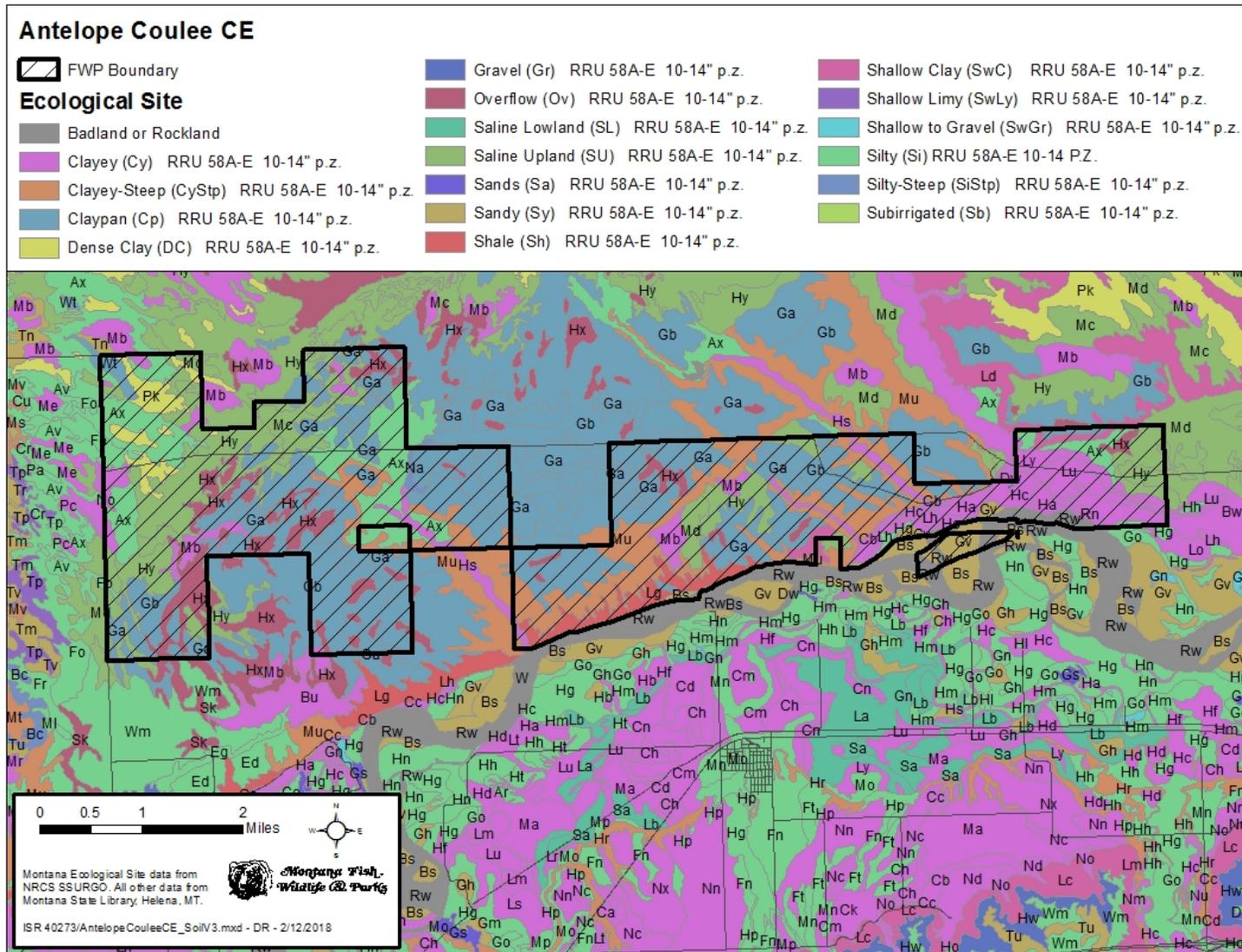


Table 2. Soil types, corresponding major plant community types and Ecological Sites.

| <b>Map Unit Symbol</b> | <b>Map Unit Symbol</b>                  | <b>Acres in CE</b> | <b>Ecological Site</b>               | <b>Major Plant Community Type(s)<br/>MT Landcover Level 3</b>  |
|------------------------|---|--------------------|--------------------------------------|--|
| Bu                     | Bew clay loam                           | 6.9                | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Great Plains Badlands  |
| Bw                     | Bowdoin clay                            | 134.3              | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Cultivated Crops, Great Plains Floodplain,<br>Great Plains Mixedgrass Prairie, Great Plains Sand Prairie   |
| Cb                     | Cherry clay, 1 to<br>3 percent slopes   | 42.4               | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Cultivated Crops, Great Plains Floodplain,<br>Great Plains Mixedgrass Prairie  |
| Cc                     | Cherry clay, 3 to<br>8 percent slopes   | 3.9                | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Great Plains Badlands, Great Plains<br>Floodplain, Great Plains Mixedgrass Prairie   |
| Ha                     | Havre clay                              | 100.9              | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass<br>Prairie, Great Plains Sand Prairie, Open Water   |
| Hc                     | Havre clay loam                         | 101.0              | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass<br>Prairie, Great Plains Sand Prairie   |
| Hs                     | Havre and<br>Lohmiller soils,<br>saline | 169.9              | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Great Plains Floodplain, Great Plains<br>Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded<br>Draw and Ravine   |
| Lh                     | Lohmiller clay                          | 43.3               | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass<br>Prairie  |
| Lo                     | Lohmiller clay<br>loam                  | 0.1                | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Great Plains Mixedgrass Prairie  |
| Lu                     | Lohmiller-<br>Hysham clays              | 139.4              | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass<br>Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great<br>Plains Riparian, Great Plains Wooded Draw and Ravine  |
| Ly                     | Lohmiller-<br>Hysham clay<br>loams      | 96.2               | Clayey (Cy) RRU<br>58A-E 10-14" p.z. | Big Sagebrush Steppe, Cultivated Crops, Greasewood Flat, Great<br>Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains<br>Ponderosa Pine Woodland and Savanna, Great Plains Riparian, Great<br>Plains Wooded Draw and Ravine |

| <b>Map Unit Symbol</b> | <b>Map Unit Symbol</b>                             | <b>Acres in CE</b> | <b>Ecological Site</b>                     | <b>Major Plant Community Type(s)<br/>MT Landcover Level 3</b>   |
|------------------------|--|--------------------|--|---|
| Mb                     | Marias clay, saline-alkali, 1 to 10 percent slopes | 224.0              | Clayey (Cy) RRU 58A-E 10-14" p.z.          | Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Mat Saltbush Shrubland  |
| No                     | Numn clay loam, 1 to 3 percent slopes              | 59.9               | Clayey (Cy) RRU 58A-E 10-14" p.z.          | Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian   |
| Rn                     | Renohill clay loam                                 | 5.2                | Clayey (Cy) RRU 58A-E 10-14" p.z.          | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass Prairie  |
| Mu                     | Midway-Nihill gravelly loam                        | 1094.4             | Clayey-Steep (CyStp) RRU 58A-E 10-14" p.z. | Big Sagebrush Steppe, Great Plains Badlands, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Riparian, Great Plains Wooded Draw and Ravine |
| Ga                     | Gilt Edge clay loam                                | 1124.0             | Claypan (Cp) RRU 58A-E 10-14" p.z.         | Big Sagebrush Steppe, Great Plains Badlands   |
| Gb                     | Gilt Edge-Arvada complex                           | 2231.9             | Claypan (Cp) RRU 58A-E 10-14" p.z.         | Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian  |
| Wt                     | Winnett complex                                    | 42.2               | Claypan (Cp) RRU 58A-E 10-14" p.z.         | Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian  |
| Pk                     | Pierre-Lismas clays, saline-Alkali                 | 212.8              | Dense Clay (DC) RRU 58A-E 10-14" p.z.      | Big Sagebrush Steppe, Great Plains Badlands, Mat Saltbush Shrubland   |
| Hx                     | Hoven clay   | 709.8              | Overflow (Ov) RRU 58A-E 10-14" p.z.        | Big Sagebrush Steppe  |
| Hy                     | Hoven and McKenzie soils                           | 1025.1             | Saline Upland (SU) RRU 58A-E 10-14" p.z.   | Big Sagebrush Steppe, Great Plains Badlands, Great Plains Riparian  |
| Mc                     | Marias clays, fans, saline-alkali                  | 263.4              | Saline Upland (SU) RRU 58A-E 10-14" p.z.   | Big Sagebrush Steppe, Great Plains Badlands   |

| <b>Map Unit Symbol</b> | <b>Map Unit Symbol</b>                   | <b>Acres in CE</b> | <b>Ecological Site</b>                         | <b>Major Plant Community Type(s)<br/>MT Landcover Level 3</b>  |
|------------------------|--|--------------------|--|--|
| Md                     | Marias-Hoven clays, saline               | 295.1              | Saline Upland (SU)<br>RRU 58A-E 10-14"<br>p.z. | Big Sagebrush Steppe, Great Plains Badlands  |
| Dw                     | Dwyer fine sand                          | 1.4                | Sands (Sa) RRU<br>58A-E 10-14" p.z.            | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie  |
| Bs                     | Banks soils                              | 46.0               | Sandy (Sy) RRU<br>58A-E 10-14" p.z.            | Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Open Water   |
| Gv                     | Glendive and Banks soils                 | 86.0               | Sandy (Sy) RRU<br>58A-E 10-14" p.z.            | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie  |
| Tn                     | Terry-Winnett complex                    | 0.6                | Sandy (Sy) RRU<br>58A-E 10-14" p.z.            | Big Sagebrush Steppe   |
| Lg                     | Lismas-Shale outcrop complex             | 259.4              | Shale (Sh) RRU<br>58A-E 10-14" p.z.            | Big Sagebrush Steppe, Great Plains Badlands, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Wooded Draw and Ravine, Open Water |
| Ld                     | Lismas-Pierre clays, saline-Alkali       | 84.8               | Shallow Clay (SwC)<br>RRU 58A-E 10-14"<br>p.z. | Big Sagebrush Steppe, Greasewood Flat, Great Plains Mixedgrass Prairie   |
| Av                     | Arvada complex                           | 3.8                | Silty (Si) RRU 58A-E<br>10-14 P.Z.             | Big Sagebrush Steppe, Great Plains Badlands, Great Plains Riparian   |
| Ax                     | Arvada-Laurel complex                    | 873.0              | Silty (Si) RRU 58A-E<br>10-14 P.Z.             | Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Riparian   |
| Fo                     | Fort Collins loam, 1 to 4 percent slopes | 40.1               | Silty (Si) RRU 58A-E<br>10-14 P.Z.             | Big Sagebrush Steppe   |
| Go                     | Glendive loam                            | 4.9                | Silty (Si) RRU 58A-E<br>10-14 P.Z.             | Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie  |
| Hg                     | Havre loam                               | 22.3               | Silty (Si) RRU 58A-E<br>10-14 P.Z.             | Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie   |

| <b>Map Unit Symbol</b> | <b>Map Unit Symbol</b>                    | <b>Acres in CE</b> | <b>Ecological Site</b>                    | <b>Major Plant Community Type(s)<br/>MT Landcover Level 3</b>   |
|------------------------|---|--------------------|---|---|
| Wm                     | Wanetta loam, deep, 2 to 4 percent slopes | 0.0                | Silty (Si) RRU 58A-E 10-14 P.Z.           | Big Sagebrush Steppe  |
| Na                     | Nihill gravelly loam                      | 22.0               | Silty-Steep (SiStp) RRU 58A-E 10-14" p.z. | Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian  |
| Rw                     | Riverwash                                 | 56.6               |   | Cultivated Crops, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Open Water  |
| W                      | Water                                     | 79.2               |   | Big Sagebrush Steppe, Cultivated Crops, Great Plains Badlands, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Ponderosa Pine Woodland and Savanna, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Open Water |

## **CHAPTER 3: Grazing Management**

### **3.1 Grazing Overview**

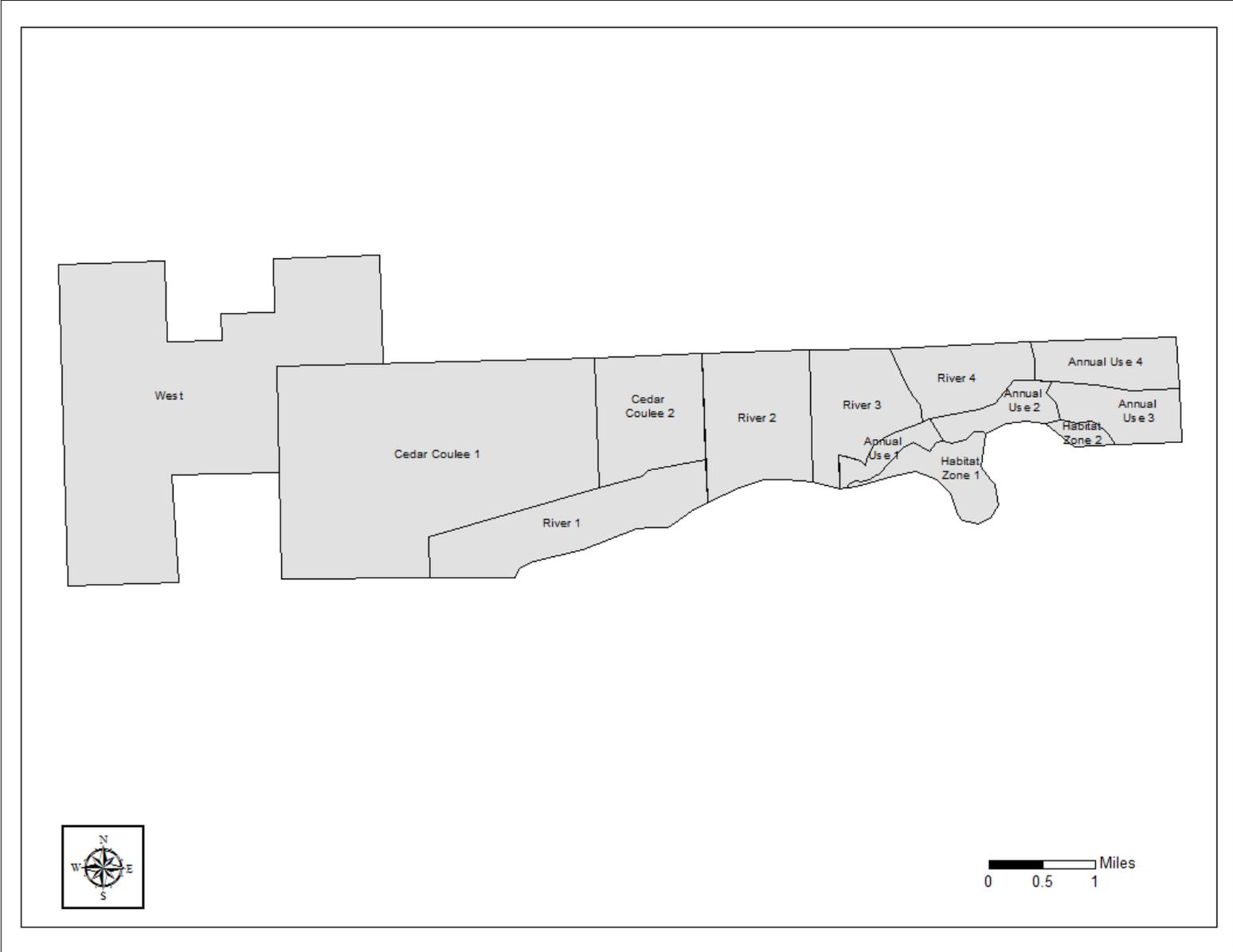
The historic use of the Land has been livestock grazing. The Land will continue to be managed as a working cattle ranch. For the past 15 years, prior to adoption of this grazing plan, the Landowners leased grazing and farming to another livestock producer. The lessee primarily used the Land for winter grazing although summer and fall grazing did occur. Typically, Cedar Coulee pasture was grazed first from mid-April to mid-June then the herd moved to the West pastured until the beginning of October. Livestock were wintered in the low-lying area shown as Annual Use areas in Figure 3.1. The cropland or Cultivated Areas in the Annual Use areas were used to produce forage and either hayed or grazed. Overall the Land supported about 300 head of cattle annually.

The grazing system in this plan follows cattle through winter, spring, summer, and fall and adheres to FWP's Minimum Standards for Grazing (Exhibit C in the Easement). The Ranch is comprised of one contiguous parcel of land, currently consisting of several permanent pastures. Some of these pastures will be cross fenced and some additional watering sources may be necessary to implement the rest rotation grazing system. In addition to the main cow-calf herd, replacement heifers, bulls and horses will be managed year-long on the Land.

To keep within FWP grazing standards for summer grazing, 3 sets of pastures will be developed accommodate each of the treatments prescribed in a 3-treatment rest rotation grazing system on an annual basis. One set will be available for an early treatment (growing season grazing), another set will be available for a late treatment (post-seed ripe grazing) and the remaining set of the summer pastures will receive the rest treatment (no livestock grazing occurs during that calendar year). For winter grazing, as many pastures as possible that are used during the late fall, winter, and early spring will receive alternating use, where some pastures are used during even years and rested during odd years, and other pastures are used during odd years and rested during even years.

It is acknowledged that areas are needed to conduct annual ranch activities, such as calving, weaning, shipping and other animal husbandry practices. In addition, there are areas of the ranch that include Cultivated Areas that are used to produce livestock feed or commercial crops. These identified portions of the ranch are not included in the grazing system and therefore are omitted from FWP Minimum Grazing Standards. It is the responsibility of the Landowner to integrate all livestock (cows, calves, replacement heifers, bulls horses, etc.) into the grazing system in compliance with the established grazing rotation and FWP Minimum Grazing Standards.

Figure 6. Schematic of the grazing pastures on the Land.



### 3.2 Summer and Fall Grazing

Throughout the summer and fall, cow/calf pairs will be managed using a 3-treatment rest-rotation grazing system from around May 1<sup>st</sup>, until weaning and shipping which typically occurs around the end of October. Each pasture set will receive only one grazing treatment per year and the treatments are rotated annually. The rest-rotation grazing system for the Land is setup up with three pasture sets comprised of a total of seven distinct pastures. The West pasture set is one pasture, the Cedar Coulee pasture set has two pastures and the River pasture set has four pastures as shown in Figure 3.2, 3.3 and 3.4.

- *Early Treatment:* Each year, one pasture set is grazed during the growing season. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe (generally early August) for the latest maturing native grasses; typically, bluebunch or western wheatgrass. The minimum amount of rest required for any pasture grazed during the plant growing season will be rested throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by a year of rest. The Early Treatment is color coded green in the yearly grazing schematics.
- *Late Treatment:* Each year, one pasture set is grazed after seed-ripe (generally early August). The approximate dates for the Late Treatment is July 31<sup>st</sup> to October 15<sup>th</sup> or when the cow/calf pairs are brought home for weaning. The Late Treatment is color coded yellow in the yearly grazing schematic.
- *Rest Treatment:* Each year, one pasture set is rested yearlong. The Rest Treatment is color coded red in the yearly grazing schematics.

Within each pasture set, rotation between pastures within that set is at the Landowner's discretion, meaning that all pastures within a set/grazing treatment could be grazed at once, or cow/calf pairs could be rotated through individual pastures within pasture sets as the Landowner sees fit. As an individual pasture gets utilized, the livestock would be moving to the next available pasture, as long as the Early, Late, and Rest schedules are followed.

### 3.3 Winter Grazing

Winter grazing will occur between the dates of November 1, or after weaning and shipping has been completed, and May 1, when livestock can go to the summer grazing pastures. There are several Cultivated Areas that will provide grazing opportunity every year (Annual Use) as shown in Figure 3.2, 3.3 and 3.4. These Annual Use will provide the core areas for wintering livestock on the Land. There are 5 pastures that will be designated for annual use. Livestock can use these areas at any time from November 1, or after weaning and shipping has occurred, until May 1, when livestock can return to summer grazing pastures. Wherever possible on native range, an alternating year of use grazing system will be applied. In the wooded and riparian areas along the Yellowstone River that have been fenced out, no grazing will occur will be scheduled. Grazing

may be utilized as a prescriptive wildlife habitat maintenance activity but that will at the discretion of FWP and will require prior approval by FWP.

### **3.4 Spring Grazing**

There is one calving pasture associated with each of the winter pasture sets. These pastures are available from approximately March 15 until May 1. As with the winter rotation, the calving pasture located on the west side of the highway will be utilized starting in even years (2020, 2022, 2024, etc.) and the calving pasture located east of the Highway will be rested from grazing during that time. The calving pasture located east of the highway will be used in odd years (2019, 2021, 2023, etc.) and the pasture set west of the highway will be unoccupied. Beginning March 15, or the onset of the calving period, livestock will leave their winter pasture set and move to the associated calving pasture until the calving period is complete. During the calving period, livestock can return into the winter pasture set they were in prior to calving if necessary.

### **3.5 Replacement Heifers and Bulls**

Periodically, the Landowner may want to retain yearling heifers and/or purchase bread heifers. Because several pastures are available in each pasture set, the Landowner has the flexibility to split the cow/calf herd from the yearling or replacement heifers within the scheduled grazing prescription. In addition, the Landowner may elect to dry lot or utilize Cultivated Areas to stage these animals until they are integrated into the cow/calf herd. Bulls will be kept in corrals near the ranch headquarters or in the established year-long use areas (Hay and Arena) when they are not in the pasture with cow for breeding purposes.

It is the responsibility of the Landowner to integrate all livestock to including replacement heifers and bulls into the grazing system in compliance with the established grazing rotation and FWP Minimum Grazing Standards.

Figure 7. Year One summer and fall grazing schedule.

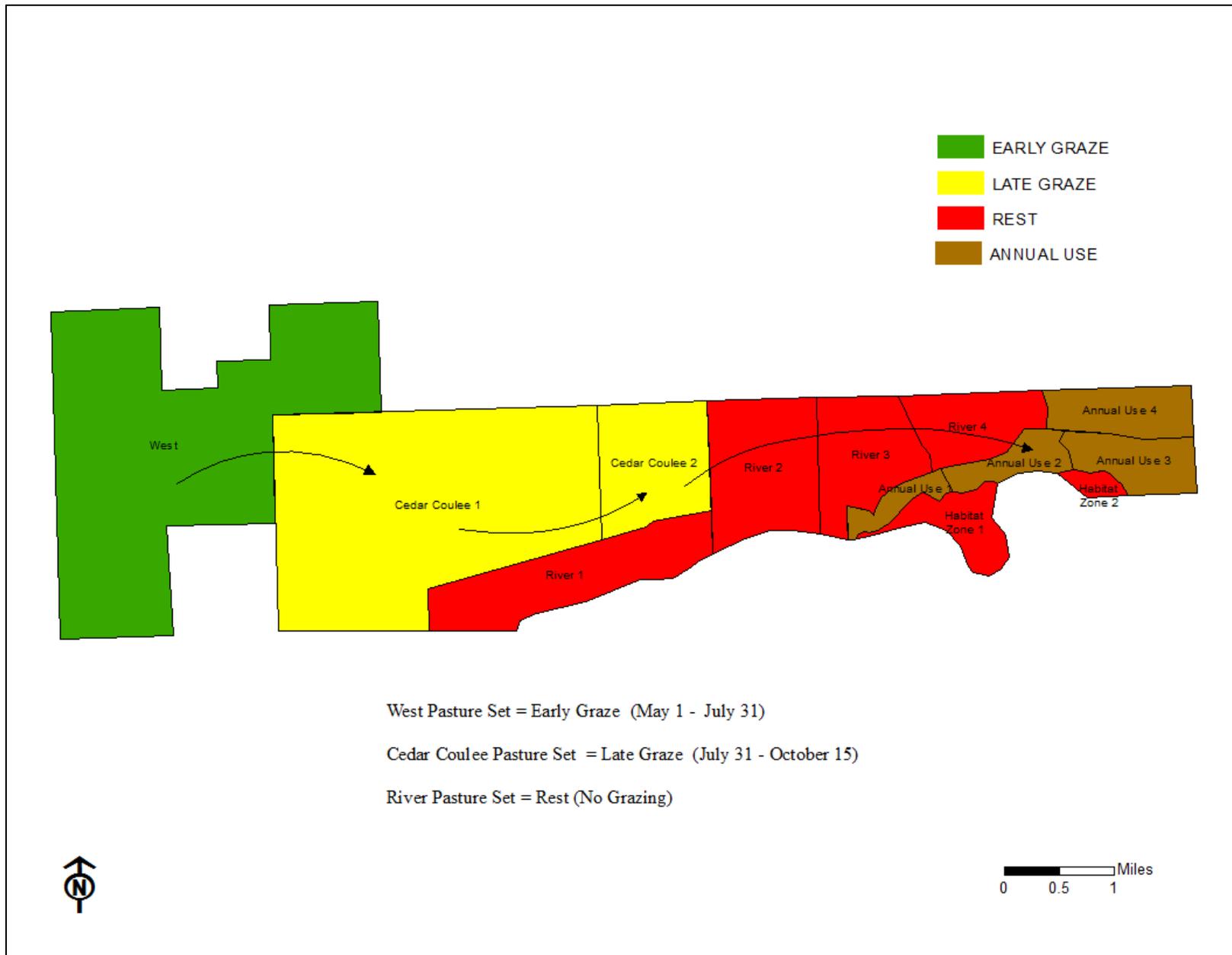


Figure 8. Year Two summer and fall grazing schedule.

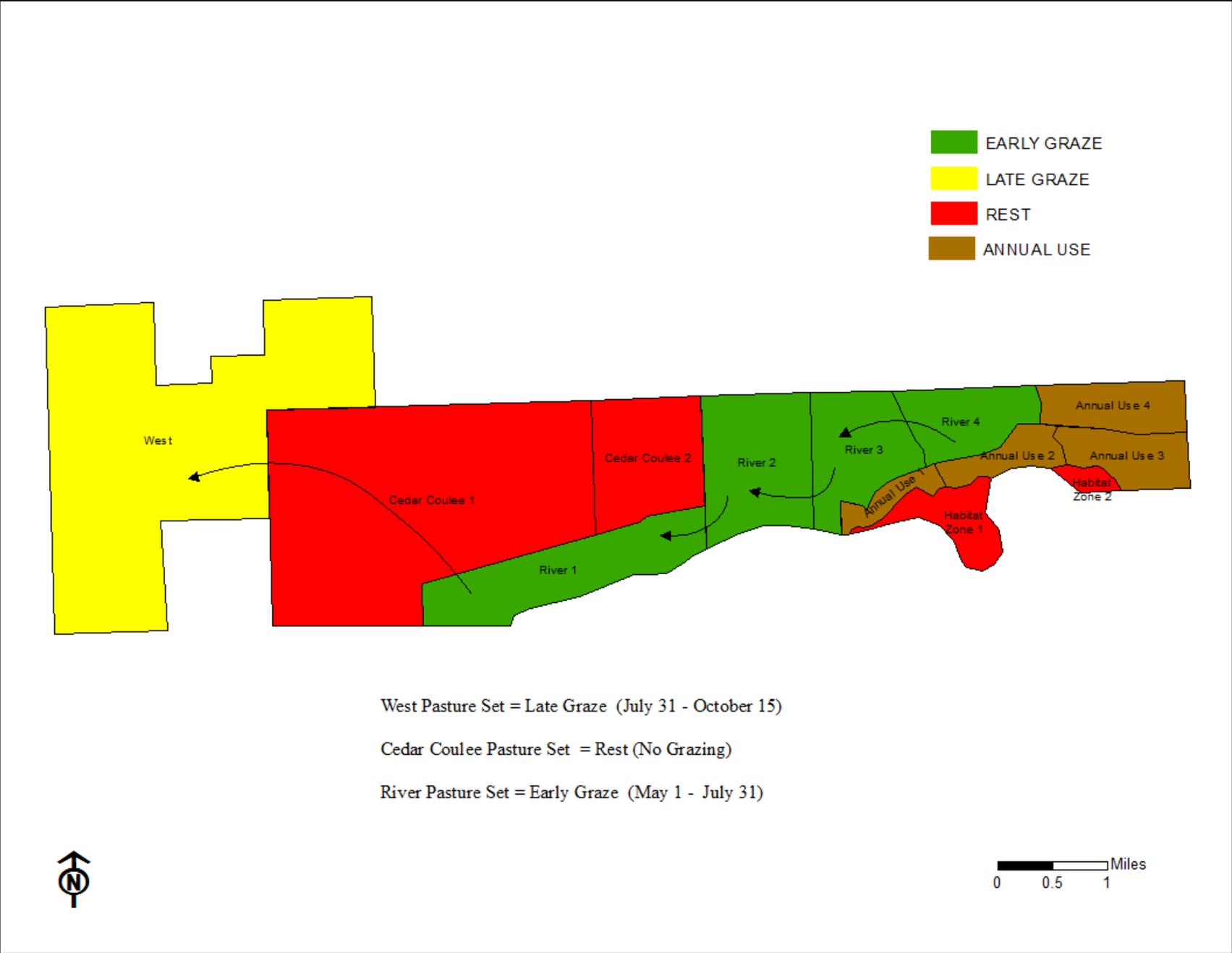


Figure 9. Year Three summer and fall grazing schedule.

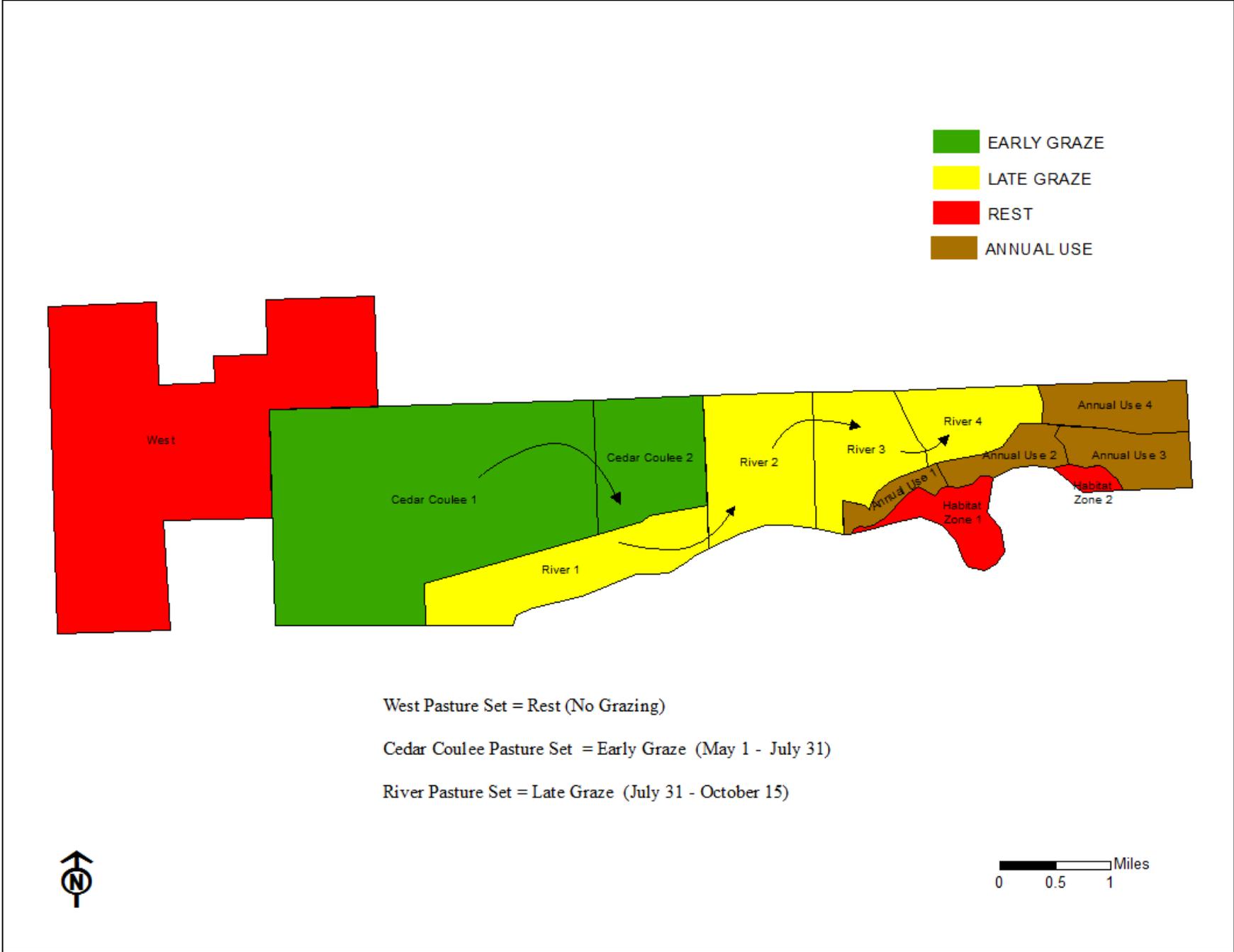


Table 3. Summer and fall grazing schedules.

| <b>Grazing System Schedule</b>  |                         |                                 |                          |
|---|-------------------------|---------------------------------|--------------------------|
| <b>Year</b>   | <b>West Pasture Set</b> | <b>Cedar Coulee Pasture Set</b> | <b>River Pasture Set</b> |
| <b>2020</b>   | Early                   | Late                            | Rest                     |
| <b>2021</b>   | Late                    | Rest                            | Early                    |
| <b>2022</b>   | Rest                    | Early                           | Late                     |
| <b>2023</b>   | Early                   | Late                            | Rest                     |
| <b>2024</b>   | Late                    | Rest                            | Early                    |
| <b>2025</b>   | Rest                    | Early                           | Late                     |
| <b>2026</b>   | Early                   | Late                            | Rest                     |
| <b>2027</b>   | Late                    | Rest                            | Early                    |
| <b>2028</b>   | Rest                    | Early                           | Late                     |
| Early = May 1 <sup>st</sup> - July 31 <sup>st</sup><br>Late = July 31 <sup>st</sup> - October 15 <sup>th</sup><br>Rest = No grazing |                         |                                 |                          |

### 3.6 Stocking Rate and Supplements

This grazing plan does not set a specific stocking rate. On deeded lands covered by the Conservation Easement, the maximum stocking rate will be based on compliance with the grazing system. As long as the Landowner remains in compliance with the grazing system, FWP will not be concerned about the stocking rate. If pasture forage consistently runs out before the scheduled timing is complete, that is an indication of too many livestock. Conversely, if excess forage remains after use, there would likely be room to pasture additional livestock. It is the responsibility of the Landowner to determine appropriate stocking rates for their livestock operation.

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas. Sites will also be located away from any known grouse breeding leks. The FWP wildlife biologist provide location of know leks to help inform the Landowner in selecting supplement locations.

### 3.7 Range Improvements

At this time, it is believed that current grazing infrastructure is adequate to initiate the prescribed grazing system. However, fencing along the river in areas identified as Habitat Zones in Figure 3.1 is dilapidated and will need to be replaced. In addition, upon implementation of the grazing system, range improvements such as water development or fence installation may be necessary to maximize the Conservation Values and comply with FWP Minimum Grazing Standards. **With prior notice to FWP**, there are two cost-share options for range improvements between the Landowner and FWP:

1. FWP pays for materials through reimbursement to the Landowner and the Landowner completes the installation as in-kind cost share.
2. The Landowner hires contracted services and all work is split 50/50 through reimbursement to the Landowner.

The Landowner and FWP will incorporate a cost-share agreement as part of the CE Purchase Agreement. All improvement involving the cost-share agreement will need prior FWP approval. As improvements are completed, FWP will reimburse the Landowner based on original or copies of original receipts for materials and services upon FWP inspection of completed work. Reimbursement paid by FWP will not exceed \$34,320.00.

Table 4. Range improvements cost estimates. Based on FWP Habitat Bureau's 2018-2019 Cost-list.

| Improvement      | Quantity            | Estimated Rate | Completion Date | Cost         |
|------------------|---------------------|----------------|-----------------|--------------|
| Remove and Fence | 26,400 ft<br>(5 mi) | \$ 2.60/ft     | 2022            | \$ 68,640.00 |
| Estimated Total  |                     |                |                 | \$ 68,640.00 |
| 50% Cost-Share   |                     |                |                 | \$ 34,320.00 |

### **3.8 Wildlife Habitat Goals Associated with Grazing Management**

The goal of this grazing system is to maintain and enhance the quality and vigor of native uplands and riparian areas on the Land. Periods of rest offered by the grazing system are intended to improve species diversity, forage quality and palatability. Pastures incorporated into summer/fall grazing systems follow a three-pasture rest-rotation which creates rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively. These periods of rest are designed to allow plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock utilize the Late pasture following seed-ripe, hoof action should trample mature seeds into the soil and facilitate regeneration. The following year's Rest treatment is intended to allow seedlings to develop root systems and achieve growth before livestock grazing resumes the following spring. The practice of rotational rest is believed to improve the health of perennial species by allowing them to recover following grazing for two growing seasons and the diversity of annual species by providing an opportunity to reproduce during periods of two growing seasons of rest. The abundance and health of highly palatable plants is thought to improve relative to grazing regimes that do not incorporate regular growing season rest, because the more palatable plants are the first to be grazed by livestock, thereby reducing their vigor and survival, and giving less palatable species a competitive advantage. Pastures incorporated into winter grazing systems will be afforded year-long rest on alternate years, and complete growing season rest, providing similar advantages for plant vigor and species diversity as those pastures in the summer system.

It is anticipated that this grazing system will enhance forage and cover for a wildlife using upland and riparian habitats. An expected increase in early spring forage in the post seed-ripe pastures will benefit mule deer and antelope as they recover from the negative energy balance of winter as they get ready to fawn. Residual vegetation associated with the rest pastures will provide valuable cover for ground nesting and brooding birds, including sage and sharp-tailed grouse and ungulate fawns. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures.

Because varied species of passerines require diverse vegetation structures and diversity cover heights, this grazing system should promote a diversity of niche habitats for grassland birds by the alternating grazing treatments. For example, the Early pasture will likely benefit Long-billed curlews that prefer short-grass areas, and the Late and Rest pasture will benefit Lark bunting that prefer taller cover. Rest provided by the grazing system will that allows for woody species to reproduce or grow above the browse line improve recruitment and growth of woody species that provide critical nutrition, as well as hiding and thermal cover for a variety of wildlife.

In addition to benefiting native vegetation and wildlife, the grazing system will contribute to overall ecosystem health. Residual cover will reduce runoff and erosion, thereby contributing to moisture retention, water quality and overall soil health. The implementation of the grazing system will benefit plant species diversity which will lead to improved abundance and diversity of pollinator and native insect populations. Finally, the grazing system will serve as an example of how livestock production and wildlife habitat conservation are compatible, as livestock production and wildlife populations will benefit under this grazing management plan.

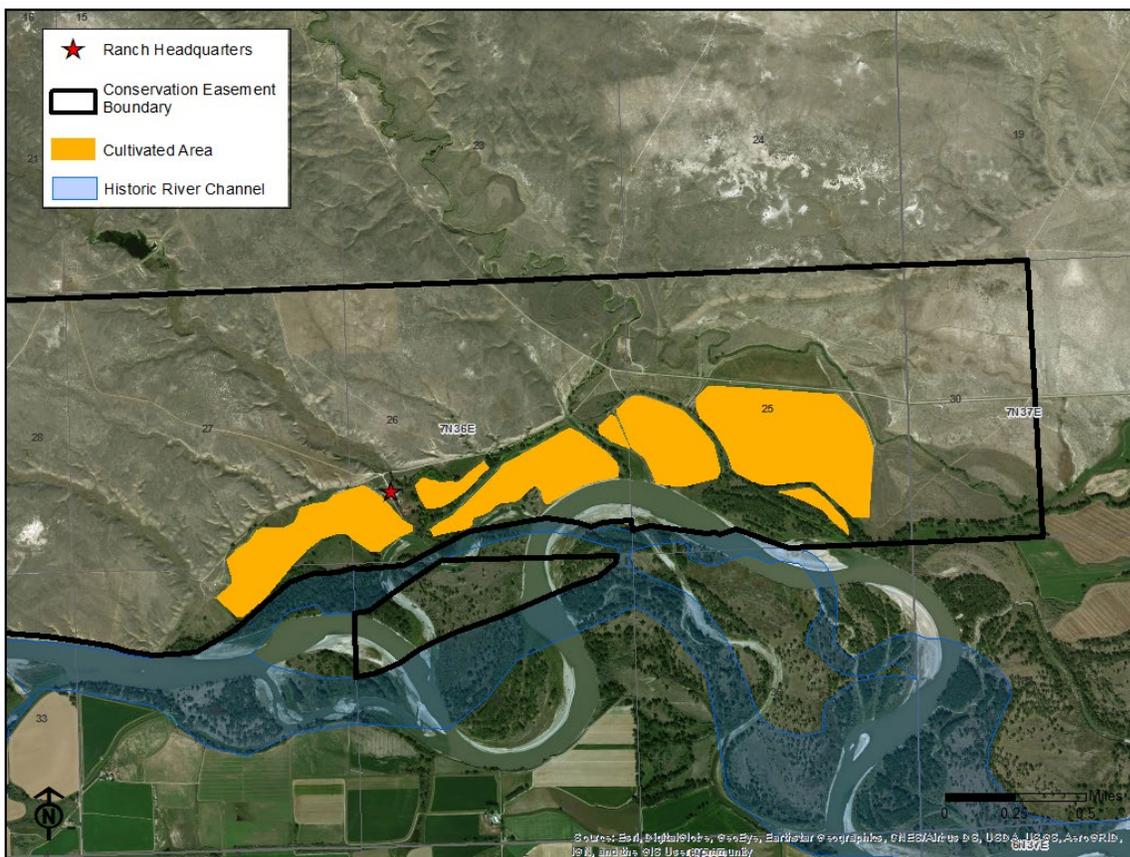
## CHAPTER 4: Management of Cultivated Areas

**Objective:** Allow the Landowner to manage Cultivated Areas to benefit the livestock operation, without degrading habitat in adjacent portions of the Land.

**Strategy:** Cultivated Areas on the Land are sources of livestock feed and revenue critical to the sustainability of the agricultural operation. In addition, these areas provide food and hunting opportunities for game species such as white-tailed deer, ring-necked pheasants and Canada geese. Per the terms of the Easement, the Landowner may utilize generally accepted agricultural practices in terms of managing the Cultivated Areas on an as-needed basis and within a given year. Cultivated Areas may be cropped, hayed, grazed, used for grassland restoration or conservation, or any combination of these activities. The planting of invasive non-native plants that would have the potential to degrade habitat in surrounding lands is prohibited. Figure 3.9 below depicts the Cultivated Areas.

As outlined in the Easement (section II.C.4 and section II.D5) the Landowner may irrigate the previously Cultivated Areas. Currently, the irrigation system on the Land is a flood irrigation system consisting of two Yellowstone River pump sites. The landowner may change irrigation systems to conserve water, reduce nutrient leaching and reduces dissolved solids runoff.

Figure 10. Location of the Cultivated Areas.



## CHAPTER 5: Management of Noxious Weeds

**Objective:** *Prevent noxious weeds from degrading the conservation and agricultural values of the Land.*

**Strategy:** The Landowner is responsible for managing noxious weeds in compliance with State law and best management practices, implementing an integrated pest management philosophy to meet weed control goals. Control may include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals.

## CHAPTER 6: Wildlife Friendly Fences

**Objective:** *Section II.C.9.b of the FWP Easement (Landowner's Rights – Man-made Structures) states that "Any new or renovated fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be "wildlife friendly" as provided in the Management Plan." For the purposes of this management plan, the term "wildlife friendly" does not refer to a specific fence design but rather in a broader context of providing for wildlife passage without inhibiting the ability of the fence to contain livestock.*

**Strategy:** Designs for wildlife friendly fences are constantly evolving with new research and testing. Paige 2012<sup>3</sup> provides an overview of current wildlife friendly designs. **With prior notice to FWP**, when a fence is proposed to be constructed or replaced, the Landowner and FWP wildlife biologist will jointly design a fence that considers the wildlife species present, habitat, and landscape features. The FWP wildlife biologist can provide input on the proposed fence route and may be able to suggest modifications that would benefit wildlife such as re-routing a fence that would pass near a grouse lek with negligible impact to the overall length of fence, difficulty of fencing or resulting pasture sizes. The design may specify wire spacing to allow passage over and under fences and minimize entanglement, or markers to improve wire visibility. Oftentimes it is not necessary for the entire fence to augment wildlife passage. Fence modifications at specific crossing spots likely to be heavily traveled by wildlife may provide sufficient wildlife passage (Paige 2012<sup>1</sup>). The default design will be a fence of not more than 4 strands of barbed wire with the height of the top wire set at 42 inches or lower and the height of the lowest wire set 18 inches from the ground or higher. Due to the nature of fencing on uneven ground, there may be places where the top wire is higher, or bottom wire is lower than specifications, this is expected so long as most of the fence conforms to height requirements.

Fence requirements in the Easement apply only to internal fences and those external fences that the Landowner is responsible for maintaining. It does not obligate adjacent landowners to wildlife friendly fence designs. In cases where the default fence design is inadequate to exclude

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<sup>3</sup> Paige, C. 2012. A Landowner's Guide to Wildlife Friendly Fences. Second Edition. Private Land Technical Assistance Program, Montana Fish, Wildlife & Parks, Helena, MT. 56 pp

livestock belonging to adjacent landowners, it may be necessary to modify this standard to adequately exclude those livestock. Provisions such as seasonal lay-downs or other fence modifications may be utilized to improve wildlife passage in this scenario.

Internal gates except those along public roadways will be left open whenever they are not needed to contain livestock. For internal gates along public roadways, FWP may provide seasonal gates (to be used when livestock are not present in the pasture) that would prevent vehicular trespass but allow excellent wildlife passage (e.g., cable/padlock gates). External gates will be left open whenever possible and agreeable to adjacent landowners.

## **CHAPTER 7: Non-Cattle Domestic Livestock**

**Objective:** *To allow the Landowner flexibility to keep non-cattle livestock on the Land.*

**Strategy:** Section II.C.1 (Landowner’s Rights – Livestock Grazing) of the Easement provides for “The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock,” and later states “For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle **with Prior Approval.**” It would be burdensome for both parties if the Landowner were required to ask permission from FWP each time they desired to non-cattle animal to have on the Land.

This management plan grants Prior Approval for the Landowner to keep up to 10 non-cattle livestock (such as ranch horses, livestock for food or fiber, 4-H projects, guardian animals, companion animals, pack animals, show animals), provided that the animals do not pose a risk to resident wildlife from disease or other factors. The grazing of these animals must conform to the grazing plan in Chapter 3.

## **CHAPTER 8: Public Access**

**Objective:** *Utilize public hunting for the dual purpose of providing recreational opportunity and managing game populations on the Land.*

**Strategy:** Per Sections 1.F. and II.B.5 of the Easement, the Landowner will be required to provide public recreational access for hunting and wildlife watching. The Easement requires that the Landowner provide a minimum 500 hunter days annually if demand exists.

At the time this Management Plan was put into effect, the Land provided year-round habitat and season-long hunting opportunity for mule deer, white-tailed deer, pronghorn, sage grouse, sharp-

tailed grouse, wild turkey, mourning doves and various waterfowl species. To a lesser degree hunting opportunity occurs for Hungarian partridge and sandhill cranes. The game species present and their abundance may change through time due to variable weather conditions, wildlife diseases and/or changing habitat conditions on the Land and the broader landscape.

The Landowner will provide hunter access for all legal species and sex of game animals for the duration of all Fish and Wildlife Commission-approved seasons. If both the Landowner and FWP determine that hunting limitations are warranted for a certain species and/or sex of game animal, and FWP provides the Landowner with written documentation, then the Landowner may limit the species and/or sex of game taken on the Land. Because the general season hunting is the primary tool available to help prevent game damage problems The Landowner will not be required to limit hunting for any species/sex of game animal. Wild game populations fluctuate over time and may exceed FWP or Landowner management objectives. If public hunting during normal commission-approved hunting seasons is insufficient to prevent game damage issues, game damage assistance may be provided on an “as needed” basis in accordance with FWP’s Game Damage Program, upon agreement of both FWP and the Landowner.

**Objective:** *Minimize potential conflict between public access and ranching operations, and between public access and wildlife management goals.*

**Strategy:** The amount of public access for wildlife watching will be at the discretion of the Landowner. The Landowner is not required to allow other recreational activities in conjunction with or separate from hunting or wildlife watching. Examples of such activities include, but are not limited to the following: hiking, bicycling, camping, photography, video filming, horse riding, shed antler hunter and collection of fossils and artifacts. The Landowner or FWP may prohibit wildlife watching activities that interfere with ranching operations or wildlife management goals. This includes any activities that have the potential to decrease habitat or forage quality or quantity and those that have the potential to disturb livestock or wildlife. If a conflict arises between wildlife watching opportunity and public hunting opportunity, the public hunting opportunity will take precedence. Dogs used for legal hunting will be allowed on the Land and must be under control at all times. The dogs on the Land for any purpose other than legal hunting is at the discretion of the Landowner. In times when the U.S. Drought Monitor (<http://droughtmonitor.unl.edu/>) indicates D3-D4 drought on a scale from D0 (Abnormally Dry) to D4 (Exceptional Drought), the Landowner may close the Land to public access due to fire danger. In times where drought is less severe, but fire danger is great, or for other legitimate reasons, the Landowner may temporarily close all or a portion of the Land to public access **with Prior Written Approval** from FWP.

**Objective:** *Provide the public a method to gain access to the Land for hunting and wildlife watching, while allowing the Landowner to put limits in place to: 1) minimize the impacts of allowing public access, 2) facilitate public safety and 3) minimize crowding.*

**Strategy:** The Landowner may manage permission for the public to access the Land using one of four options: 1) unlimited walk-in access with no permission required, 2) hunter administered

sign-in boxes, 3) permission administered from the Landowner (in person, via telephone, text, social media, or email), or 4) permission administered by FWP. If permission is administered by FWP the Landowner may, allow access the Land for hunting, wildlife watching, or any other reason. Such access may be in addition to, but may not exclude, those members of the public that were granted hunting access by FWP.

Per section II.B.5.j of each Easement, the Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land.

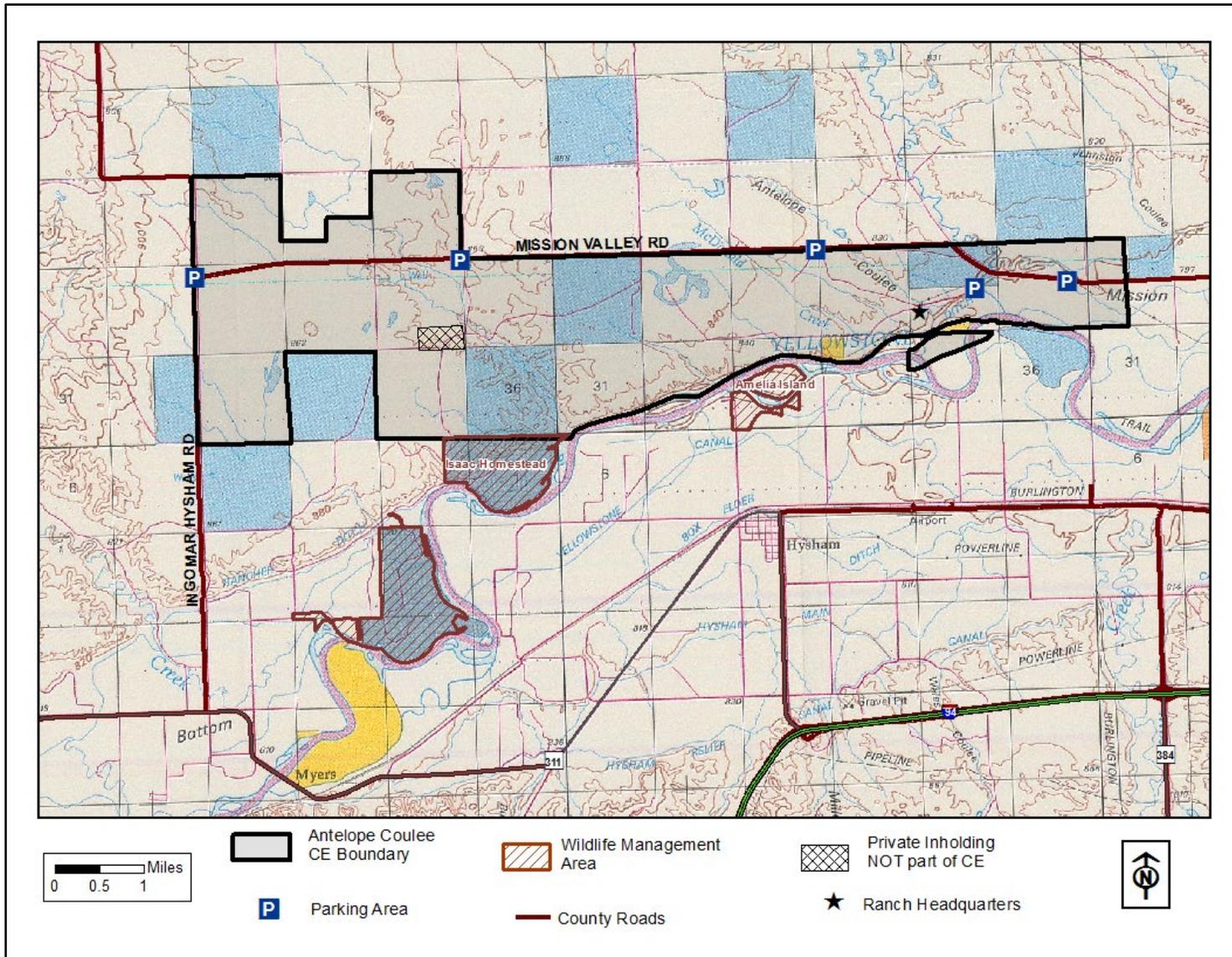
The Landowner may, but is not required to:

- Manage the number of individuals and/or parties on the Land at any given time to provide for public safety and minimize crowding. Immediate family members and employees do not count toward these minimums.
- Require hunters and wildlife watchers to sign in and collect information to identify them such as: name, ALS number, telephone, address, vehicle license plate number.
- Require hunters and wildlife watchers to check in and check out.
- Limit the hours that the wildlife watchers can access the Land. Hunters must be allowed on the Land two hours before and two hours after legal shooting hours to accommodate prime hunting hours. Hunters in the act of tracking or retrieving harvested game animals will not be subject to these limitations.
- Specify certain days or times of day which they will be available to provide permission and/or communicate with the public, provided that such limitations are reasonable.
- Prohibit the use of wheeled motorized and non-motorized vehicles on the Land. The use of game carts by hunters to retrieve downed game must be allowed.
- Limit public access to walk-in only from designated parking areas shown in Figure 8.1.
- Restrict fires.
- Restrict the removal of fossils or artifacts .
- Provide more leniency than the ranch rules on a case-by-case basis. For example, they may allow disabled hunters to drive on ranch roads.

To ensure that the spirit of the public access requirements provided for in the Easement are being upheld, FWP may:

- Place signs delineating Conservation Easement boundaries and/or rules.
- Require that the Landowner document hunter days provided.
- Manage public hunting access on the Land if the Landowner fails to provide public access as specified in the Easement and this Management Plan.

Figure 11. Designated Parking Areas for walk-in public access.



## CHAPTER 9: Nuisance Wildlife and Trapping

**Objective:** *Allow the Landowner to manage nuisance wildlife species.*

**Strategy:** The Landowner will not be required to limit the take of unregulated wildlife species, provided that control measures used comply with all applicable laws. At the present time unregulated species include coyotes, badgers, skunks, raccoons, foxes, and rodents (including prairie dogs), among others. The hunting of these species is at the Landowner's discretion.

The Landowner must allow a minimum of one member of the public to trap on the Land during established trapping seasons if the demand exists. They may select the individual that is allowed to trap on the Land and may retain that individual for as long as they wish. They may require a minimum setback up to 100 yards from roads and trails, and 1 mile from homes, buildings and corrals. They may prohibit trapping in pastures with livestock. They may require notification when the individual(s) will be on the Land, of trap locations, and animals caught. The trapper(s) may be required to follow the same access rules as other members of the public described in Chapter 8 of this Management Plan.

## CHAPTER 10: Wastes Disposal

**Objective:** *Allow the Landowner to dispose of personal household rubbish and other non-toxic materials per section II.D.15 (Waste Disposal) of each Conservation Easement.*

**Strategy:** The Easement allows for a single landfill for personal use by the Landowner. The location of this landfill may be within Hay Yard area shown in Exhibit D in the Easement. The total footprint of this landfill shall not exceed 10,000 square feet at any given time. When establishing a landfill, the Landowner shall segregate and store the top 18 inches of topsoil, or all available topsoil, whichever is applicable to the site, for reclamation purposes. The landfill pit may remain open for an unlimited amount of time. If the Landowner chooses to move the location of the landfill within the Hay Yard area, or to retire a portion of the landfill to allow for expansion, the Landowner shall be responsible for reclamation of the retired landfill site, including fill dirt, replacement of topsoil, control of noxious weeds and replanting the site as provided in Chapter 4 (Management of Cultivated and Seeded Areas) of this management plan. The Landowner will surround the landfill pit with standard livestock panels to discourage wildlife from entering and minimize the risk of wildlife entanglement.

## **CHAPTER 11: Monitoring**

Annual monitoring will be completed on all Conservation Easement lands. This assessment shall be conducted by FWP or a designated third party and will involve meeting with the Landowner and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with the terms of the Easement. The Landowner is encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system schedule, the terms in the Deeds of Conservation Easement and to contact FWP with any questions or concerns to prevent non-compliance.

**Management Plan Approved By:**

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Date

**End of Attachment: D**